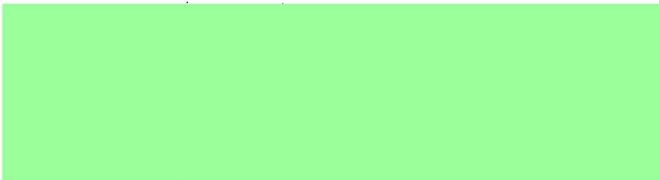




**U.S. Citizenship
and Immigration
Services**

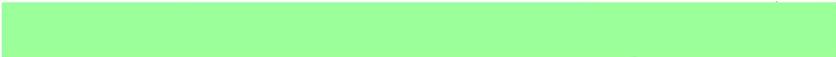
(b)(6)



Date: **FEB 12 2013**

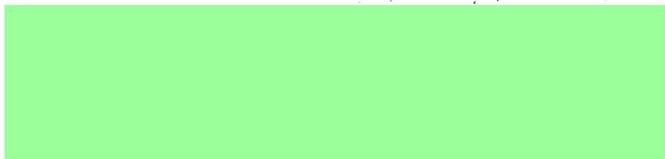
Office: VERMONT SERVICE CENTER

File: 

IN RE: Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

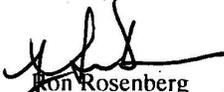
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (the "director") approved the immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director revoked approval of the petition upon notice and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the case will be returned to the director for further action.

The regulation requires that an appeal from the revocation of the approval of a petition must be filed within 15 days after the service of the notice of revocation. *See* 8 C.F.R. § 205.2(d). If the notice was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.8(b). The director improperly gave notice to the petitioner that her appeal must be filed within 33 days of the revocation decision. The director's improper notice of appeal rights does not extend the regulatory requirement that the appeal of a revocation decision issued by mail must be filed within 18 days.

The record in this case shows that the director issued the revocation decision on July 9, 2012. The last day the appeal could have been timely filed was Friday, July 27, 2012. U.S. Citizenship and Immigration Services (USCIS) received the petitioner's Form I-290B, Notice of Appeal, on Tuesday, July 31, 2012, which was 22 days after the director's decision was issued. Because the appeal was untimely filed, it must be rejected.

Nonetheless, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) directs that if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The petitioner's untimely appeal meets the requirements of a motion to reconsider and a motion to reopen. Counsel claims that the director erroneously determined that the petitioner failed to establish that she resided with her husband during their marriage and entered into the marriage in good faith in contravention of the applicable law and USCIS policy. Counsel also submits new evidence. Accordingly the petition will be returned to the director to treat the untimely appeal as a motion to reopen and reconsider.

ORDER: The appeal is rejected and returned to the director for treatment as a motion to reopen and reconsider.