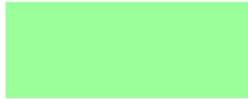




U.S. Citizenship
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Services

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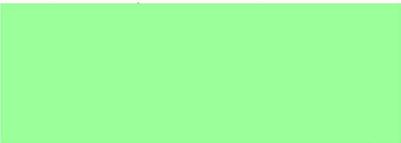
Date: **JAN 09 2013** Office: VERMONT SERVICE CENTER

FILE: 

IN RE: 

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)

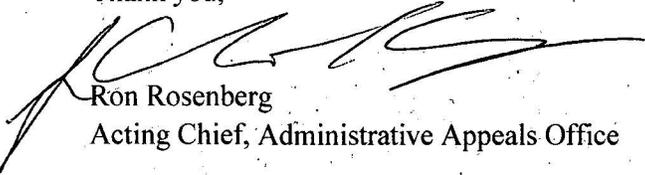
ON BEHALF OF PETITIONER:



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 Director, Vermont Service Center, denied the immigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the petition will remain denied.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the service center director issued the decision on August 25, 2011. It is noted that the service center director properly gave notice to the petitioner that he had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

Counsel initially submitted a Form I-290B, Notice of Appeal, that was not properly signed and was consequently rejected per the regulation at 8 C.F.R. § 103.2(a)(7)(i). The signed Form I-290B was not received by the service center until October 31, 2011, or 67 days after the decision was issued. Accordingly, the appeal was untimely filed and must be rejected. *See* 8 C.F.R. § 103.5(a)(7)(iii) (A benefit request that is rejected will not retain a filing date).

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states 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 Director of the Vermont Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.