



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

(b)(6)

[Redacted]

Date: **JUN 05 2013** Office: VERMONT SERVICE CENTER

[Redacted]

IN RE: Self-Petitioner: [Redacted]

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:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen and reconsider will be dismissed. The appeal will remain dismissed and the petition will remain denied.

In order to properly file a motion to reopen or reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party or the attorney or representative of record must file the complete motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion 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). There is no exception to the filing deadline for a motion to reconsider. 8 C.F.R. § 103.5(a)(1)(i). Failure to timely file a motion to reopen may be excused in the discretion of United States Citizenship and Immigration Services (USCIS) if the petitioner demonstrates that the delay was reasonable and beyond his or her control. *Id.*

The AAO dismissed the appeal on December 5, 2012. Although the petitioner dated the Notice of Motion (Form I-290B) January 7, 2013, it was not received by the service center until January 8, 2013, or 34 days after the decision was issued. Accordingly, the motion was untimely filed.

Insofar as the motion was filed as a motion to reconsider, there is no exception to the filing deadline. 8 C.F.R. § 103.5(a)(1)(i). Insofar as the motion was filed as a motion to reopen, the petitioner has not demonstrated that the delay was reasonable and beyond her control. *Id.* The motion to reopen and reconsider was untimely filed and accordingly must be dismissed.

ORDER: The motion is dismissed. The December 5, 2012 decision of the Administrative Appeals Office is affirmed.