



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 09 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 Director, Vermont Service Center (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be rejected as untimely filed.

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). A delay in filing a motion to reopen may be excused in the discretion of U.S. Citizenship and Immigration Services (USCIS) only where the petitioner demonstrates that the delay was reasonable and beyond his or her control. *Id.*

The AAO dismissed the appeal on January 25, 2012. Counsel initially submitted a Form I-290B, Motion to Reopen and Reconsider to an incorrect location that was consequently rejected per the regulation at 8 C.F.R. § 103.2(a)(6). The Form I-290B Motion to Reopen and Reconsider was not received by USCIS until March 2, 2012, or 37 days after the decision was issued. Counsel has not demonstrated that the delayed filing of the motion to reopen was reasonable and beyond his or the petitioner’s control. Accordingly, the motion to reopen was untimely filed and must be rejected.

ORDER: The motion to reopen is rejected.