



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 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”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 director issued the decision on June 16, 2011 and properly gave notice to the petitioner that he had 33 days to file the appeal. Service of the decision is completed upon mailing the notice by ordinary mail addressed to the affected party and his attorney of record at his last known address. See 8 C.F.R. § 103.8(a)(1)(i). Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The appeal was not properly filed until April 12, 2012, or 301 days after the decision was issued. On appeal, counsel for the petitioner asserts that neither the petitioner nor counsel ever received the director’s decision. A review of the administrative record shows that the decision was mailed to counsel at the address provided on the Form G-28 Notice of Entry of Appearance as Attorney and there is no evidence that the decision was not delivered as required. Therefore, service of the decision was completed as per the regulation at 8 C.F.R. 103.8(a)(1)(i). Accordingly, the appeal was untimely filed.

Additionally, the appeal would have been summarily dismissed even if timely filed. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). Here, counsel did not submit a brief on appeal or additional evidence. On the Form I-290B, Notice of Appeal, counsel failed to identify any specific, erroneous conclusion of law or statement of fact in the director’s decision dated June 16, 2011. Consequently, the appeal would have been summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

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.

The appeal was untimely filed and must be rejected.

ORDER: The appeal is rejected.