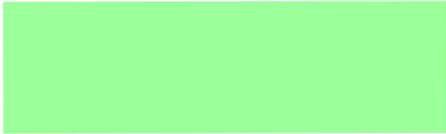




U.S. Citizenship
and Immigration
Services

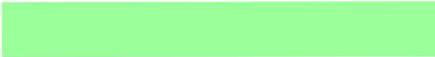
(b)(6)



Date: **SEP 03 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:

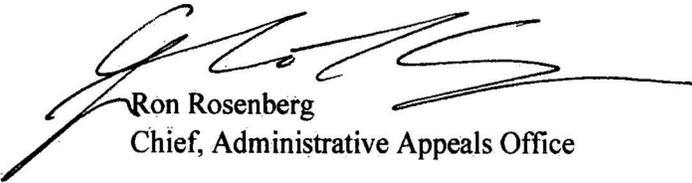
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
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 and affirmed its decision on a motion to reopen. The matter is now again before the AAO on a second motion to reopen. The motion will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by his United States citizen spouse.

On December 3, 2010, the director denied the petition for failure to establish the requisite good-faith entry into the marriage. The AAO dismissed a subsequent appeal on July 12, 2011. On December 20, 2012, the AAO granted a motion to reopen, but affirmed its prior decision to dismiss the appeal. On the present motion to reopen, the petitioner reasserts his eligibility and submits additional evidence.

A motion to reopen or reconsider must be filed within 30 days of the adverse decision. 8 C.F.R. § 103.5(a)(1)(i). If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The AAO issued its decision on December 20, 2012 and properly gave notice to the petitioner that he had 30 days to file the motion. The Form I-290B, Notice of Appeal or Motion, was not received by the service center until January 23, 2013, or 34 days after the decision was issued. The filing date is not the date of mailing, but the date of receipt at the designated USCIS office. *See* 8 C.F.R. § 103.2(a)(7)(i). Accordingly, the motion was untimely filed.

The filing deadline for motions to reopen may be excused in the discretion of U.S. Citizenship and Immigration Services (USCIS) only “where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.” 8 C.F.R. § 103.5(a)(1)(i). The petitioner has provided no explanation for his untimely filing and the record does not demonstrate that the delay in filing the motion was reasonable and beyond the petitioner’s control. *See* 8 C.F.R. § 103.5(a)(2) (stating the requirements for a motion to reopen). As the motion was untimely filed, it must be dismissed.

ORDER: The motion is dismissed. The July 12, 2011 and December 20, 2012 decisions of the Administrative Appeals Office are affirmed.