U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: AUG 0 1 2014 Office: VERMONT SERVICE CENTER File:

IN RE: Self-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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director ("the director") denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the appeal and a subsequent motion to reopen and reconsider. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be 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) provides that the affected party or the attorney or representative of record must file the complete motion within 30 days of the decision that the motion seeks to reopen and reconsider. 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). A failure to file a motion to reopen within the period may be excused in the discretion of U.S. Citizenship and Immigration Services where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. *See* 8 C.F.R. § 103.5(a)(1)(i). A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The director denied the petition for failure to establish the requisite battery or extreme cruelty, joint residence, or entry into the marriage in good faith. The petitioner filed an untimely appeal which the director treated as a motion to reopen and affirmed the denial. We summarily dismissed the appeal for failing to identify any specific, erroneous conclusion of law or statement of fact in the director's decision. On August 30, 2013, we dismissed a subsequent motion to reopen and reconsider. Our decision specifically indicated that any subsequent motion must be filed within 33 days of the date of the decision. The service center did not receive the petitioner's Notice of Motion (Form I-290B) until October 15, 2013, which was 46 days after the decision was issued. Accordingly, the appeal was untimely filed.

Although the regulation at 8 C.F.R. § 103.5(a)(1)(i) allows us to excuse an untimely motion to reopen when the petitioner demonstrates that the delay is reasonable and beyond his control, in the instant case, the petitioner has made no such demonstration.

As the motion was untimely filed, it must be dismissed. The petition remains denied.

ORDER: The motion is dismissed.