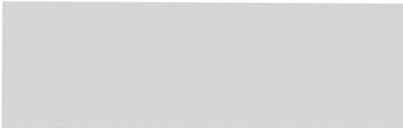




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: APR 24 2015

FILE #: [REDACTED]

PETITION #: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Child Pursuant to Section 204(a)(1)(B)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(iii)

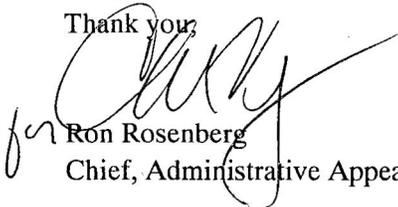
ON BEHALF OF PETITIONER:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


for 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 a subsequent appeal and two subsequent motions. The matter is again before us on a motion to reopen and a motion to reconsider.¹ The motion will be dismissed. The appeal will remain dismissed and the petition will remain denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(iii), as an alien child battered or subjected to extreme cruelty by his U.S. lawful permanent resident stepparent.

The director denied the petition because the petitioner filed the Form I-360 self-petition when he was 30 years old and therefore did not meet the definition of a child under section 101(b)(1)(B) of the Act. The petitioner thus failed to establish that he had a qualifying relationship with a U.S. lawful permanent resident parent and was eligible for immigrant classification based upon that relationship. The director further determined that the petitioner did not qualify for the late-filing waiver at section 204(a)(1)(D)(v) of the Act, which allows an individual to file a Form I-360 self-petition before he or she attains 25 years of age if he or she shows that the abuse was at least one central reason for the filing delay. On appeal, we affirmed the director’s decision.

On two successive motions, the petitioner reasserted that he remained eligible as an abused child of a lawful permanent resident because he was 20 years old at the time his stepfather filed an immigrant petition on his behalf and the Violence Against Women Act (VAWA) provisions allowed stepchildren to remain eligible to file a Form I-360 petition after 21 years of age.² We dismissed each motion for failing to meet the applicable requirements.

United States Citizenship and Immigration Services (USCIS) regulations require that motions to reconsider be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i). Similarly, USCIS regulations require that motions to reopen be filed within 30 days of the underlying decision, except that failure to timely file a motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the affected party's control. *Id.* In this matter, the motion was filed on September 11, 2014, 35 days after our August 7, 2014 decision. As the record does not establish that the failure to file the motion within 30 days of the decision was reasonable and beyond the petitioner’s control, the motion is untimely and must be dismissed for that reason.

On motion, the petitioner states that he did not know that he was ineligible to file for benefits until he was over 25 years old, as he received interim employment benefits and did not receive the letter

¹ Although the petitioner checked the box on the Form I-290B indicating that he intended to file an appeal of our last decision, we do not exercise appellate jurisdiction over our own decisions. We will thus consider the filing as a motion to reopen and to reconsider.

² The petitioner’s age when his stepfather filed the Form I-130 petition for alien relative on his behalf is not relevant to his eligibility under the instant petition. Here, the petitioner was already over 21 when his mother filed the self-petition naming him as a derivative beneficiary and therefore he was not eligible for derivative benefits. Under the Child Status Protection Act (CSPA) amendments to section 204 of the Act the petitioner may have been eligible to file a self-petition based on his relationship with his stepfather before the age of 25. See, Section 204(a)(1)(D)(v) of the Act.

denying his status as a derivative beneficiary of his parent's Form I-360 self-petition until July 15, 2009, after it was too late for him to file a Form I-360 self-petition. The timing of the denial letter does not alter the requirements for filing a Form I-360 self-petition. In this case, as noted by the director, the petitioner did not meet the definition of an abused child of a United States lawful permanent resident stepparent at the time of filing the instant petition.

A motion to reopen must provide new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The motion to reopen does not provide new facts and is not supported by documentary evidence. A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The petitioner does not cite any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy. Nor does he show that our prior decision was erroneous based on the evidence of record at the time. The motion to reopen and to reconsider must be dismissed for this additional reason. *See* 8 C.F.R. § 103.5(a)(4).

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The motion is dismissed. The May 9, 2012, decision of the Administrative Appeals Office is affirmed. The appeal remains dismissed and the petition remains denied.