



U.S. Citizenship
and Immigration
Services

(b)(6)



JUL 28 2015

DATE:

FILE #:

PETITION RECEIPT #:

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:



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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on motion. The motion will be denied.

The petitioner seeks immigrant classification pursuant to 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 her U.S. citizen spouse.

The director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, finding the evidence insufficient to establish that the petitioner had entered into marriage in good faith. The petitioner filed an appeal on Form EOIR-29, which the director rejected in a notice dated June 18, 2013. The petitioner filed an appeal on Form I-290B, Notice of Appeal or Motion, on August 13, 2013, 56 days after the director's rejection notice. In a decision dated September 12, 2014, we rejected the appeal as untimely. The petitioner then filed a motion to reopen on Form I-290B, which she submitted directly to our office on October 14, 2014. In a notice dated October 22, 2014, we returned the Form I-290B to the petitioner because motions and the accompanying filing fees cannot be filed directly with our office. The petitioner re-filed Form I-290B on November 18, 2014. The director denied the motion as untimely filed and forwarded it to us.

In the brief accompanying her motion, the petitioner asserts that her initial appeal, filed on August 13, 2013, should have been accepted as timely because it "relates back" to the timely-filed Form EOIR-29. She also contends, in a Nunc Pro Tunc Motion for Leave to File Appeal Late, submitted on March 16, 2015, that the instant motion should be accepted as timely because we have discretion to accept an untimely filing for good cause shown. Although we will accept the petitioner's motion to reopen as timely because she properly filed it within 30 days of the notice that it had been rejected, she has not met the requirements of a motion to reopen. Therefore, the motion will be denied.

In her denial of the petitioner's Form I-360, the director correctly instructed the petitioner to file any appeal on Form I-290B. The petitioner instead filed Form EOIR-29. Additionally, even if the petitioner's Form I-290B did "relate back" to the Form EOIR-29, she did not file Form I-290B until August 13, 2013, 56 days after the notice that the Form EOIR-29 had been rejected. In order to properly file an appeal, the petitioner must file the complete appeal within 30 days of service of the unfavorable decision. 8 C.F.R. § 103.3(a)(2)(i). If the decision was mailed, the appeal must be filed within 33 days. 8 C.F.R. § 103.8(b). Accordingly, we properly rejected the appeal. 8 C.F.R. § 103.3(a)(2)(v)(B)(1). The motion is denied.

In these proceedings, the petitioner bears the burden of proving eligibility for the benefit sought. 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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the motion will be denied.

ORDER: The motion is denied. The appeal remains dismissed and the petition remains denied.