



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-C-H-

DATE: JAN. 15, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a citizen of the United States. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The Petitioner subsequently filed a timely appeal which we dismissed. The matter is now before us on a motion to reopen and reconsider. The motions will be denied.

I. APPLICABLE LAW

In order to properly file a motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that the motion be filed within 30 days of the unfavorable decision. Similarly, a motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of U.S. Citizenship and Immigration Services (USCIS) 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). 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).

II. PERTINENT FACTS AND PROCEDURAL HISTORY

On June 25, 2014, the Director denied the petition after determining that the Petitioner did not establish that she had resided with her U.S. citizen spouse and that she entered into the qualifying relationship with her U.S. citizen spouse in good faith. The Petitioner timely filed an appeal. We dismissed the appeal on June 1, 2015, and properly notified the Petitioner that she had 33 days to file a motion.

The Petitioner filed the Form I-290B, Notice of Appeal or Motion, on July 7, 2015, 36 days after our decision was issued. Neither the Act nor the pertinent regulations grant us authority to extend this time limit.

III. ANALYSIS

The Petitioner's motion to reconsider was not filed within the 30-day period following our decision. Moreover, although the regulation relating to motions to reopen provides that a late filing may be excused in the discretion of USCIS, the Petitioner has provided no explanation regarding the late filing of her motion and has not demonstrated that the delay in filing the motion to reopen was beyond her control and that the delay was reasonable.

IV. CONCLUSION

The Petitioner has not met the requirements for a motion to reopen and reconsider and the motions must, therefore, be denied. 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of R-C-H*, ID# 15452 (AAO Jan. 15, 2016)