



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

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

MATTER OF A-A-A-

DATE: MAY 3, 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 U.S. citizen. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director denied the petition because the Petitioner did not establish that he had been subjected to battery or extreme cruelty by his U.S. Citizen spouse. The Petitioner subsequently filed an untimely appeal, which we rejected. The matter is now before us on a motion to reopen and reconsider. We will deny the motions.

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. ANALYSIS

On April 28, 2014, the Director denied the Petitioner's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, after determining that the Petitioner did not establish that he was subjected to battery or extreme cruelty by his U.S. citizen spouse. The Director properly gave notice to the Petitioner that he had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant us authority to extend this time limit. The Petitioner filed the Form I-290B, Notice of Appeal or Motion, on June 3, 2014, 36 days after the Director's decision was issued. Accordingly the Form I-290B was rejected as untimely filed.

(b)(6)

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The Petitioner filed the instant Form I-290B on October 19, 2015, which was 47 days after our prior decision was issued. On motion, the Petitioner indicates in part three of the Form I-290B that he is filing a combined motion to reopen and reconsider. The filing deadline may be excused for motions to reopen in the discretion of U.S. Citizenship and Immigration Services only “where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.” *See* 8 C.F.R. § 103.5(a)(1)(i).

On motion, the Petitioner asserts only that the delay in filing the appeal below was beyond his control because he was waiting for a subpoenaed police report. 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 his motion and has not demonstrated that the delay in filing the motion to reopen was beyond his control and that the delay was reasonable. Accordingly, the Petitioner has not met the requirements for a motion to reopen and reconsider and the motions must, therefore, be denied. *See* 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied). Further, notwithstanding the Petitioner’s assertions below and on motion, the subpoenaed police reports from the [REDACTED] Police Department do not offer sufficient additional facts or information that overcome the Director’s decision that the Petitioner was not subjected to battery or extreme cruelty during his marriage.

III. CONCLUSION

In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of A-A-A-*, ID# 16395 (AAO May 3, 2016)