



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

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

MATTER OF M-T-H-

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 lawful permanent resident of the United States. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition for preference classification rather than remain with or rely upon an abuser to secure immigration benefits.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not established that he entered into the marriage with his spouse in good faith or that he was battered by or subjected to extreme cruelty by his spouse.

The Petitioner subsequently filed a timely appeal which we dismissed. We also denied two previously-filed motions to reopen and reconsider. The matter is now before us on a third motion to reopen and reconsider.

Upon review, 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. RELEVANT FACTS AND PROCEDURAL HISTORY

We dismissed the second motions to reopen and reconsider on May 27, 2014, and properly notified the Petitioner that he had 33 days to file a motion. The Petitioner filed the Form I-290B, Notice of Appeal or Motion, on July 9, 2014, 43 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 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.

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 M-T-H-*, ID# 11559 (AAO May 3, 2016)