



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

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

MATTER OF S-L-

DATE: SEPT. 12, 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, Vermont Service Center, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), concluding that the Petitioner had not established a qualifying relationship with her U.S. citizen spouse and her eligibility for immediate relative classification based on that relationship. We dismissed the Petitioner's appeal. The matter is now before us on a motion to reopen and a motion to reconsider.

Upon review, we will deny the motion.

I. LAW

In order to properly file a motion to reopen and a motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion be filed within 30 days of the unfavorable decision. 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. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

On the Form I-290B, Notice of Appeal or Motion, the Petitioner indicates that she would file a brief and/or additional evidence with this office within 30 days. Pursuant to 8 C.F.R. § 103.3(a)(2)(vii) and (viii), an affected party may request additional time to file a brief, which is to be submitted directly to us. As of this date, however, we have not received a brief or additional evidence from the Petitioner. The Petitioner also indicates on the Form I-290B that she is filing an appeal of our last decision. We do not, however, exercise appellate jurisdiction over our own decisions. Thus, we will consider the filing as a motion to reopen and a motion to reconsider.

III. ANALYSIS

We issued our prior decision on February 8, 2016, and properly notified the Petitioner that she had 33 days to file a motion. Neither the Act nor the pertinent regulations grant us authority to extend this time limit. The Petitioner filed the instant motion on March 14, 2016, or 35 days after the decision was issued. Although the regulation allows us the discretion to excuse a late-filed motion to reopen in certain, specific instances, the Petitioner has not provided any reason for her untimely filing. Accordingly, the Petitioner's motion was untimely filed.

IV. CONCLUSION

As the Petitioner has not met the filing requirements, the motion must be denied. 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied). 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, the Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied

Cite as *Matter of S-L-*, ID# 18123 (AAO Sept. 12, 2016)