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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 07 2010

IN RE: Petitioner: [REDACTED]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reconsider. The motion will be dismissed.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner did not establish that: (1) he has been the victim of qualifying criminal activity; (2) he has suffered substantial physical and mental abuse as a result of having been the victim of qualifying criminal activity; (3) he possesses credible and reliable information establishing that he has knowledge of the details concerning the qualifying criminal activity upon which his petition is based; (4) he has been, is being, or is likely to be helpful to United States (U.S.) law enforcement authorities investigating or prosecuting qualifying criminal activity; and (5) the qualifying criminal activity violated the laws of the United States or occurred in the United States. The AAO concurred with the director's decision, and dismissed the appeal on February 18, 2010.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), a motion received in a U.S. Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office. In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the complete motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

As stated above, the record indicates that the AAO dismissed the appeal on February 18, 2010. According to the date stamp on the Form I-290B Notice of Appeal or Motion, it was received by USCIS on May 4, 2010, or 75 days after the decision was issued. Accordingly, the motion was untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion that does not meet applicable requirements shall be dismissed. As the petitioner did not file the motion to reconsider within the time provided for by the regulation, it must be dismissed. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is dismissed. The AAO's previous decision, dated February 18, 2010, is affirmed.