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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  
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAR 01 2010**  
EAC 08 112 50454

IN RE: Petitioner: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner seeks nonimmigrant classification under section 1101(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 on September 16, 2009 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 director also noted throughout his decision that the petitioner did not submit the requisite law enforcement certification.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application 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 appeal 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 an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

As stated above, the record indicates that the director issued his latest decision on September 16, 2009. According to the date stamp on the Form I-290B Notice of Appeal, it was received by USCIS on October 20, 2009, or 34 days after the decision was issued. Accordingly, the appeal was untimely filed.<sup>1</sup>

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. An untimely-filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by

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<sup>1</sup>We note that the petitioner indicated on the Form I-290B that a brief or other evidence would be submitted to the AAO within 30 days. As of this date, however, we have not received any additional evidence to supplement the record. The regulations at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to Form I-290B require the affected party to submit the brief or evidence directly to the AAO, not to the Vermont Service Center or any other federal office.

affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy.

Review of the record indicates that the appeal does not meet the requirements of either a motion to reopen or reconsider. As part of the appeal, the petitioner submitted a statement in which he disagrees with the director's conclusions. The petitioner does not, however, address every eligibility criterion that the director discussed in his denial decision. The AAO, therefore, does not find that the appellate filing contains new evidence or provides any arguments to establish that the director incorrectly applied the law or USCIS policy.

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. As the appeal was untimely filed and the petitioner has failed to provide any new facts or evidence that support a motion to reopen or reconsider, the appeal must be rejected.

**ORDER:** The appeal is rejected. The petition is denied.