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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

D14



Date: **JAN 11 2012**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner: 

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:



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 _____ 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 of the Vermont Service Center (“the director”) denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) summarily dismissed the petitioner’s subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

In its March 31, 2011 decision, the AAO summarily dismissed the petitioner’s appeal because counsel failed to specifically identify any legal or factual error in the director’s decision pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v). On the Form I-290B, Notice of Appeal, counsel left blank Part 3, “Basis for the appeal.” On Part 2 of the Form I-290B, counsel checked box B, “I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days.” Because counsel stated no basis for the appeal on the Form I-290B and failed to submit a brief or additional evidence, the AAO summarily dismissed the appeal.

On motion, counsel asserts in his April 19, 2011 affidavit that he properly filed the appeal with the Vermont Service Center and that the brief was filed “with supporting materials to establish errors of law and fact made by the Vermont Service Center.” Counsel further claims that attached exhibits to the motion contain “[p]roof of filing of the materials.”

Counsel’s assertions are not supported by the record. Although counsel properly filed the Form I-290B, Notice of Appeal, with the Vermont Service Center, the record contains no attachments to the appeal. On motion, counsel submits a document entitled “Appellant’s Brief and Appeal of USCIS Denial of U Visa,” which he dated September 27, 2010. However, the record contains no evidence that this brief was timely filed on appeal. In addition, the record contradicts counsel’s claim that his brief was initially filed with the Form I-290B, Notice of Appeal, with the Vermont Service Center because the Form I-290B is date-stamped as received by the Vermont Service Center on August 27, 2010, the same date on which counsel purportedly signed his appellate brief although the U.S. Postal Service mailing label shows that counsel mailed the Form I-290B, Notice of Appeal, two days earlier on August 25, 2010. The record also lacks any evidence that the brief was filed with the AAO within 30 days after that date, as counsel indicated on the Form I-290B, Notice of Appeal.

Counsel’s submission fails to meet the requirements for a motion to reopen or reconsider. A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Counsel’s submissions on motion do not support his new assertions regarding the filing of his appellate brief, which are also contradicted by the record. Counsel fails to cite any pertinent decisions to establish that the AAO’s prior decision was based on an incorrect application of law or

agency policy regarding appellate procedures. On motion, counsel also has not established that the AAO's prior decision was incorrect based on the record at the time it was issued, which did not include counsel's brief. As counsel's submission fails to meet the requirements for a motion to reopen or reconsider, the motion shall be dismissed.

ORDER: The motion is dismissed. The March 31, 2011 decision of the Administrative Appeals Office is affirmed.