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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



Δ14

Date: Office: VERMONT SERVICE CENTER
JUL 18 2012

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (the director) denied the Petition for U Nonimmigrant Status (Form I-918 U petition). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be dismissed. The AAO's previous order will be affirmed.

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 appeal 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).

The record indicates that the AAO issued its decision on December 12, 2011. U.S. Citizenship and Immigration Services (USCIS) received the complete motion on January 24, 2012, or 43 days after the decision was issued. Accordingly, the motion was untimely filed. In a letter, dated January 20, 2012, counsel acknowledged that the motion was submitted late, but requested that the director excuse the late filing because the petitioner needed to complete a written request for a fee waiver. While the regulation at 8 C.F.R. § 103.5(a)(1)(i) allows the director discretion to excuse the late filing of a motion to reopen, no similar provision applies to the filing of a motion to reconsider. Consequently, the late filing of the motion cannot be excused.

As the motion was untimely filed it must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4), for failing to meet applicable requirements.

ORDER: The motion is dismissed.