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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

PUBLIC COPY



DH

DATE: **MAY 16 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 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 with the field office or service center that originally decided your case by filing a 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, denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal and a motion to reopen and reconsider the AAO's decision. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be dismissed. The petition will remain denied.

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 she had been the victim of a qualifying crime or criminal activity and she, therefore, could not meet the eligibility criteria at section 101(a)(15)(U)(i) of the Act. The AAO dismissed the subsequently filed appeal, determining that the petitioner had not established that she was the victim of a qualifying crime or criminal activity, as required by subsections 101(a)(15)(U)(i) and (iii) of the Act or that she had suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity. Counsel filed a motion to reopen and a motion to reconsider the AAO's decision. The motion was dismissed as being untimely filed. On this second motion, counsel for the petitioner notes that the first motion was timely filed but sent to the wrong service center and rejected. Counsel asserts that the improper filing was a clerical error and considering the humanitarian concerns related to U visas, the petitioner should not suffer the consequences of the untimely filing when the circumstances were beyond the petitioner's control.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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."

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In this matter, counsel for the petitioner references the regulation at 8 C.F.R. § 103.5(a)(1)(i) which provides that an untimely filed motion to reopen may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. Counsel's assertion that the first motion was sent to the wrong office by mistake is an insufficient basis to reopen or reconsider this matter. Counsel has not provided pertinent precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or Service policy. Section 291 of the Act, 8 U.S.C. § 1361. The regulation at 8 C.F.R.

§ 103.5(a)(4) states: “[a] motion that does not meet applicable requirements shall be dismissed.” Accordingly, the motion will be dismissed and the previous decisions of the AAO will be affirmed.

ORDER: The motion is dismissed. The AAO’s November 18, 2010 and May 2, 2011 decisions are affirmed. The petition remains denied.