

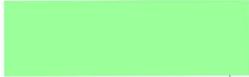
(b)(6)

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



DATE: **APR 19 2013** 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.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition (Form I-918). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen or reconsider. The motion will be dismissed. The prior decision of the AAO will be affirmed, and 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 initially denied the petition because the petitioner is not admissible to the United States and her request for a waiver of inadmissibility was denied. Counsel appealed the director's denial and the AAO found the petitioner inadmissible only under section 212(a)(6)(A)(i) of the Act and dismissed the appeal. On motion, counsel contends that the director should reopen the denial of the Form I-918 in light of the AAO's decision.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that any motion to reopen or reconsider a proceeding must be filed within 30 days of the adverse decision. An additional three days is added if the decision was served by mail. 8 C.F.R. § 103.8(b).

The record indicates that the AAO issued its decision on September 7, 2012. On October 29, 2012, the petitioner, through counsel, submitted the instant motion to reopen or reconsider, which was beyond the 33-day filing period. Although the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides for the late filing of a motion to reopen where it is demonstrated that the delay was reasonable and beyond the petitioner's control, neither counsel nor the petitioner has presented any evidence to demonstrate that the petitioner should be excused from the filing deadline as a matter of discretion. Accordingly, the motion must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).¹

ORDER: The motion is dismissed. The petition remains denied.

¹ We note that in her motion, counsel asked the director to reopen the denial of Form I-918 U petition based upon the AAO's prior decision. However, as the director was not the official who made the last decision in this matter, the director has no jurisdiction to consider counsel's motion. 8 C.F.R. § 103.5(a)(1)(ii). The dismissal of the petitioner's appeal was without prejudice to the filing of a new Form I-918 and waiver application (Form I-192).