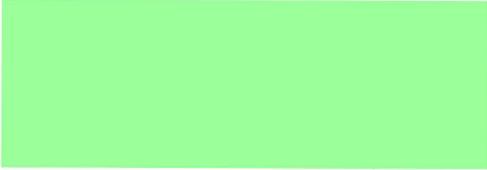


(b)(6)

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

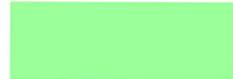


U.S. Citizenship  
and Immigration  
Services

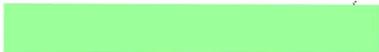


Date: **MAR 27 2013**

Office: VERMONT SERVICE CENTER FILE:

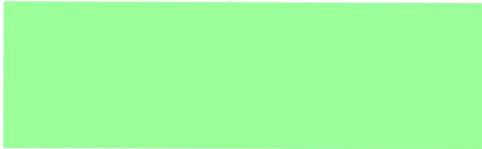


IN RE: Petitioner:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

(b)(6)

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**DISCUSSION:** The Director, Vermont Service Center (the director), denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen or reconsider. The motion will be dismissed 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.

In order to properly file a motion to reopen or reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party or the attorney or representative of record must file the complete motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion 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). A benefit request which is rejected will not retain a filing date. *Id.* There is no exception to the filing deadline for a motion to reconsider. 8 C.F.R. § 103.5(a)(1)(i). For a motion to reopen, failure to file before the period expires “may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.” *Id.*

The AAO dismissed the petitioner’s appeal on July 13, 2012, and properly gave notice to counsel that any subsequent motion should be filed in accordance with the instructions on the Form I-290B, Notice of Appeal or Motion. The cover letter of the AAO’s decision also noted in bold print not to file any motion directly with the AAO. Counsel initially submitted a Form I-290B to the AAO, which was rejected and returned with instructions to submit the motion to the Vermont Service Center. Counsel then filed the motion again with the AAO where it was again rejected. The motion was not received by the service center as properly filed until September 11, 2012, or 60 days after the decision was issued. *See* 8 C.F.R. § 103.2(a)(7)(iii) (A benefit request that is rejected will not retain a filing date).

Insofar as the motion was filed as a motion to reconsider, there is no exception to the filing deadline and thus the untimely motion must be dismissed. 8 C.F.R. § 103.5(a)(1)(i). Insofar as the motion was filed as a motion to reopen, counsel has not demonstrated that the delay was reasonable or beyond the control of the petitioner, operating through counsel, as he was clearly notified in the July 13, 2012 AAO dismissal that any motions could not be filed directly with the AAO. As such, the untimely motion to reopen must be dismissed. *Id.*

As the motion was untimely filed and counsel has not demonstrated that the delay was reasonable and beyond the control of the petitioner, the motion must be dismissed. 8 C.F.R. § 103.5(a)(4).

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