

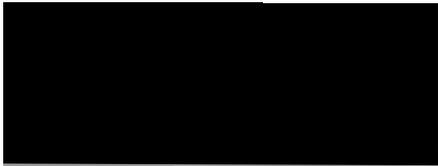
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U.S. Citizenship
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HL

FILE: [REDACTED]
EAC 04 148 53398

Office: VERMONT SERVICE CENTER

Date: **JAN 23 2009**

IN RE: Petitioner: [REDACTED]

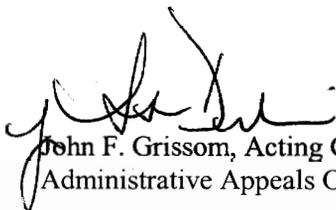
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked approval of the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected, but the matter will be remanded to the director to treat the late appeal as a motion.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director revoked approval of the petition because the petitioner did not establish that he married his spouse in good faith and resided with her.

In order to properly file an appeal, the regulation at 8 C.F.R. § 205.2(d) provides that the petitioner may appeal the decision to revoke an approval within 15 days after service of the notice of the revocation. If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on November 30, 2006. According to the date stamp on the Form I-290B Notice of Appeal, it was received by USCIS on January 25, 2007, or 56 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. An untimely-filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that 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 USCIS policy.

Review of the record indicates that the appeal meets the requirements of a motion. The petitioner submits two statements, one dated December 15, 2006 and another dated January 15, 2007. In both statements, the petitioner discusses his divorce proceedings and refers to specific lines from the transcripts. The petitioner also submits copies of the transcripts of his divorce proceedings from 2003. As the director did not have copies of these transcripts at the time of the decision, they are considered "new."

Although the appeal was untimely filed, the petitioner has provided new evidence that supports a motion to reopen. Therefore, we are rejecting the appeal and remanding the matter to the director to treat the appeal as a motion.

ORDER: The appeal is rejected, but the matter is remanded to the director to treat the appeal as a motion.