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U.S. Department of Homeland Security
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Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**



FILE: [Redacted] **Office:** VERMONT SERVICE CENTER **Date:** MAY 11 2004
EAC 02 121 52504

IN RE: **Petitioner:** [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Special Immigrant Battered 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:
[Redacted]

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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a native and citizen of Jamaica who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition, finding that the petitioner had abandoned her petition because she failed to respond to a request for additional evidence.

The regulation at 8 C.F.R. § 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. The regulation at 8 C.F.R. § 103.2(b)(15) provides that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. § 103.5.

On appeal, counsel submits additional evidence and requests an additional thirty days to submit further evidence. More than one year has lapsed since the date of the filing the appeal and nothing more has been submitted to the AAO for inclusion in the record.

The regulation at 8 C.F.R. § 103.2(a)(1) states, in pertinent part, that every appeal must be executed.

In the instant case, the petitioner sought to file an appeal of the director's decision dated December 12, 2002. The Vermont Service Center rejected the petition because it was unsigned. The petitioner filed a signed Form I-290B on February 1, 2003, more than thirty days after the date of the decision.

The regulation at 8 C.F.R. § 103.3(a)(2) states, in pertinent part, that the affected party shall file an appeal, with fee, including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) states, in part:

An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

Additionally, 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states, in part:

If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The applicant's statement, on appeal, does not meet the requirements of a motion.

The record reflects that the director denied the petition on December 12, 2002 based upon the petitioner's failure to respond to the director's request for additional evidence. The petitioner was advised that she may file an appeal, along with the required fee, within 30 days of the date of the decision. The applicant subsequently filed an appeal on January 6, 2003. On January 24, 2003, the petitioner was advised that her appeal could not be accepted because the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, was unsigned. On February 6, 2003, approximately 56 days after the director's decision, a signed appeal was filed at the Vermont Service Center, the office where the unfavorable decision was made.

The appeal will be rejected due to the applicant's failure to file a timely appeal, and because a decision to deny a petition based upon abandonment is not appealable.

ORDER: The appeal is rejected.