



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

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 36236454

Date: FEB. 13, 2025

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Abused Spouse of U.S. Citizen or Lawful Permanent Resident

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions, codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center (the Director) denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). We dismissed a subsequent appeal on the same basis. The matter is now before us on a motion to reopen. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen must be filed within 30 calendar days of the decision it seeks to reopen (or within 33 calendar days if we mailed the decision), unless the applicant or petitioner demonstrates that the delay was reasonable and beyond their control. 8 C.F.R. § 103.5(a)(1)(i). U.S. Citizenship and Immigration Services (USCIS) has sole discretion to determine whether the petitioner has demonstrated that the delay was reasonable and beyond their control. *Id.*

Counsel for the Petitioner acknowledges that the motion to reopen filing is late,¹ but contends that they did not receive our February 27, 2024, decision to dismiss the appeal until April 8, 2024. Under 8 C.F.R. § 103.8(a)(1)(i), routine service consists of mailing the notice by ordinary mail addressed to the affected party and his or her attorney or representative of record at his or her last known address. USCIS records do not indicate that the mailing addressed to the Petitioner, or the separate mailing addressed to the Petitioner's representative, was returned to us as "undeliverable," and the decisions were mailed to the addresses on record. We will thus dismiss the Petitioner's motion to reopen because it is untimely filed, and the Petitioner has not established that the delay was reasonable and beyond their control. *See* 8 C.F.R. §§ 103.5(a)(1), 103.8(b).

ORDER: The motion to reopen is dismissed.

¹ The USCIS received the instant motion to reopen on May 10, 2024, 73 days after we issued the adverse decision.