



U.S. Citizenship
and Immigration
Services

October 02, 2015

[REDACTED]
NOWCRJ LEGAL DEPT
217 N PRIEUR STREET
NEW ORLEANS LA 70112

A Number: [REDACTED]

File Receipt Number [REDACTED]

Applicant/Petitioner Name: [REDACTED]
Beneficiary:

Dear Sir/Madam:

On November [REDACTED] 2013, you filed the Petition for U Nonimmigrant Status (Form I-918) to classify yourself as a victim of substantial physical or mental abuse of qualifying criminal activity under section 101(a)(15)(U) of the Immigration and Nationality Act (INA).

You have not established your eligibility for the desired classification and U.S. Citizenship and Immigration Services (USCIS) cannot reach a favorable decision. Therefore, your petition is denied.

In arriving at this determination, USCIS has made findings of fact, conclusions of law, and where appropriate, discretionary determinations.

In order to be eligible for this classification, petitioner must demonstrate that he or she meets the requirements set forth in Title 8 Code of Federal Regulations (8 CFR), section 214.14(b). This section requires that a petitioner for U nonimmigrant status must show that he or she:

- (1) has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity;
- (2) possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based;
- (3) has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based, and since the initial cooperation, has not refused or failed to provide information and assistance reasonably requested; and
- (4) the qualifying criminal activity described occurred in the United States (including Indian country and military installations) or the territories and possessions of the United States, or



violated U.S. federal law that provides for extraterritorial jurisdiction to prosecute offenses in a U.S. federal court.

Additionally, provisions under 8 CFR 214.1(a)(3)(i) require that any alien applying for nonimmigrant status be admissible to the United States. You have not established the following eligibility requirements of paragraph one above.

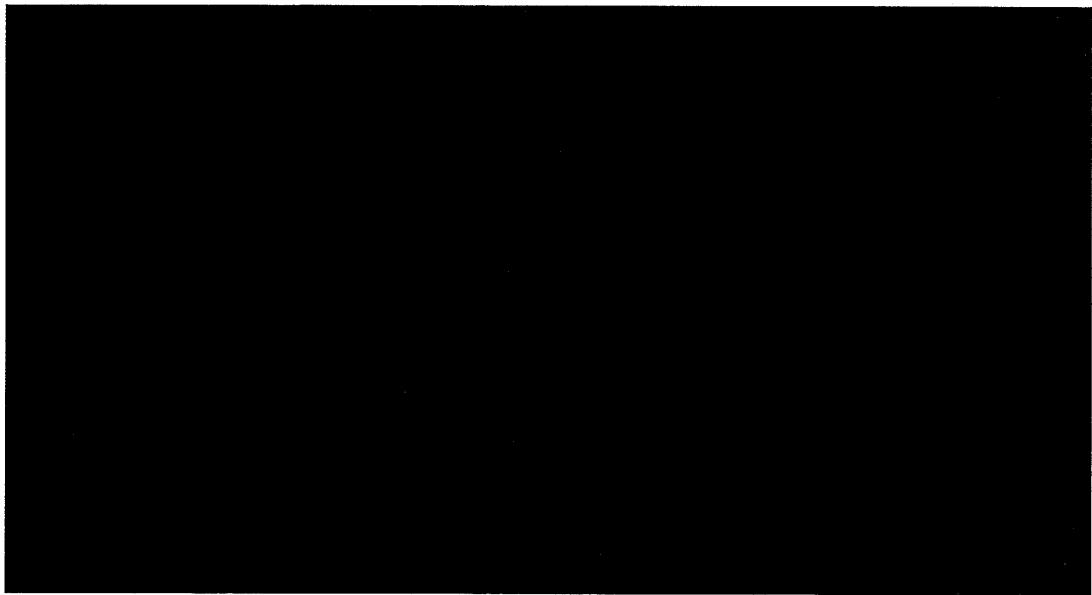
The record shows that you were lawfully admitted to the United States as an H-2B temporary nonimmigrant worker on April 19, 2013, to work in the hospitality industry as a housekeeper for an employer by the name of Mister Clean Laundry and Cleaning Services (Mister Clean) located in Florida.

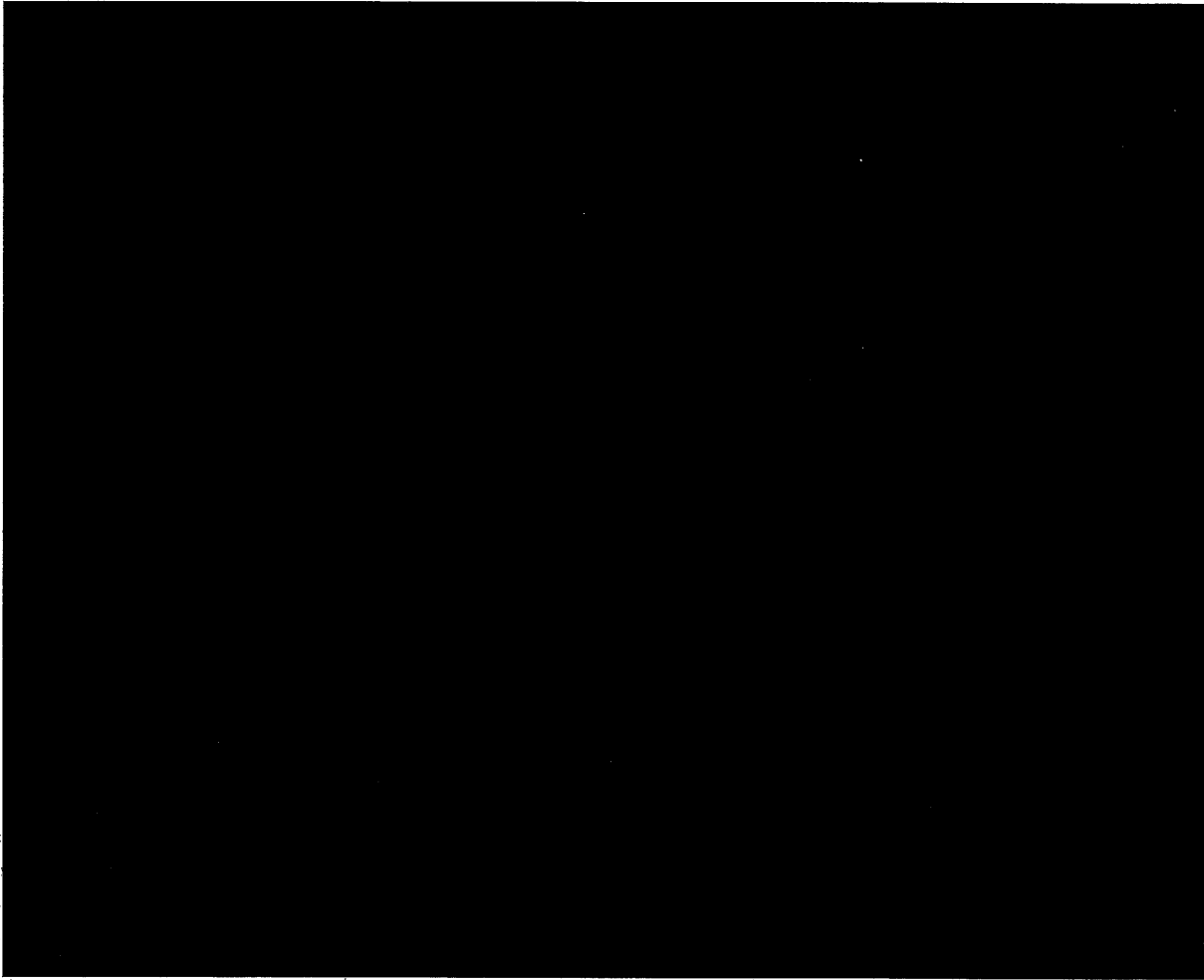
In support of the petition, a form I-918, Supplement B was certified by the U.S. Department of Labor (DOL), Wage and Hour Division, for the crimes of Involuntary Servitude and Witness Tampering. Attached to the Supplement B was an undated and unsigned statement from DOL describing how Mister Clean violated numerous Fair Labor Standards Act provisions, and how through coercive tactics, Mister Clean threatened some H2B workers with deportation consequences after some workers staged a work stoppage in protest of unfair wages and substandard living arrangements. The threats of deportation and blacklisting of H-2B workers were directed to those workers who did not show up to work, did not work as instructed by their supervisors, or if they attempted to report, or engaged in conversations, with outside investigative sources to report workplace violations by Mister Clean. Included as initial evidence was a letter dated April 28, 2011, from DOL Washington DC delegating authority to certify Supplement B forms to the Wage and Hour Regional Administrators of DOL.

This was found to be insufficient, and on April 2, 2014, USCIS requested the following evidence:

evidence of admissibility and a valid passport; a personal statement from the victim; evidence that the petitioner was a victim of qualifying criminal activity, and who suffered substantial physical or emotional harm as a direct result of the qualifying criminal activity; and a copy of the contract between the petitioner and Mister Clean.

On June 27, 2014, the following was received in response to the request for evidence:





The evidence submitted has established that you were a victim of Involuntary Servitude and Witness Tampering, who possessed information, was helpful, and has continued to be helpful in the investigation of Mister Clean's unlawful labor practices. Mister Clean did not provide fair remuneration or adequate housing as promised at the time of recruitment. Guest workers for Mister Clean did not receive full wages for hours worked; many checks had undeclared deductions taken, checks were late, or checks bounced. Many of the guest workers were not assigned a 40-hour workweek. Some guest workers complained to Mister Clean management about their working and living conditions which resulted in retaliatory tactics used by Mister Clean management to silence those who protested. The evidence showed that Mister Clean management personnel willfully created a climate of fear by making verbal threats of deportation consequences to those who refused to work as directed, continued to complain about the work and living conditions, or if they engaged in reporting the workplace violations to some higher investigative authority.

You stated you were not given 40 hours of work per week, and for the few shifts assigned, you were not paid fair wages for the hours worked, and your paychecks would often contain deductions which resulted in virtually no remuneration. You were told by the owner and his supervisors to cease complaining about the working and living conditions, and you were verbally threatened with deportation and blacklisting if you continued complaining. You did receive a warning notice in your paycheck after a June protest. You feared that Mister Clean would carry out those threats so you decided to continue working. As the working and living conditions remained unchanged, you decided to participate in a protest in August which culminated in a formal complaint filed with the DOL, followed by the termination of all guest workers by

[REDACTED]
Mister Clean.

The majority of the documentation submitted was general in nature and did not address the substantial harm specific to your case, thus it will not be given significant weight in determining whether you suffered substantial physical or emotional harm. The letter from Eunice Cho and Dr. Giselle Hass discussed examples of workplace abuse in a general context, however, there was no indication that they had direct knowledge of your situation at Mister Clean. The response to the request for evidence provided by Wayne Kotowski, of the Wage and Hour Division, DOL, Atlanta Georgia, did not cite your name specifically, but discussed at length why DOL believed you to be a victim of Involuntary Servitude, Forced Labor, and Witness Tampering. However, your personal affidavit, and the letters from [REDACTED] z and [REDACTED] H [REDACTED] provided statements specific to your experience during your employment with Mister Clean, and will be evaluated to determine whether you suffered substantial physical or mental abuse as the result of having been a victim of qualifying criminal activity.

Substantial Physical or Mental Abuse

Paragraph (1) above requires that the petitioner has suffered substantial physical or mental abuse as the result of having been a victim of qualifying criminal activity. According to 8 CFR 214.14(a)(9) qualifying crime or qualifying criminal activity means one or more of the following or any similar activities in violation of Federal, State or local criminal law of the United States: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; stalking; fraud in foreign labor contracting; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

The factors for determining whether physical or mental abuse is substantial are: the nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; and the extent to which there is permanent or serious harm to the victim's appearance, health, or physical or mental soundness of the victim. No single factor is a prerequisite to establish that the abuse suffered was substantial. Additionally, the existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial.

You are a [REDACTED]-year old single woman who has the financial responsibility of taking care of your sick mother in Jamaica. You stated that your two daughters moved to the U.S. six years ago to be with their father. You stated you held several jobs including housekeeping, sales, and teaching, however your salaries were never enough to pay all of your expenses. You heard about a job opportunity working as a housekeeper in the United States under the guest worker program. You were not making enough money in Jamaica to comfortably support yourself and your mother, and you believed you would be able to make more money working in the United States. You heard about an employment agency representing Mister Clean who was looking for guest workers. You were interviewed in January 2013 and met representatives from Mister Clean who said you qualified for the job. You recalled being told you would make a lot of money and work at least 40 hours per week from March through November 2013. You were given a sheet of paper describing the job which indicated you would be provided with a furnished apartment and two people per room. You were never shown a formal contract.

In February you were accepted for employment, however you had to pay fees totaling \$2000 U.S. dollars

[REDACTED]

which included uniforms, medical insurance, one month's rent, airfare/transportation, visa fees, and a police background check. You did not have the personal funds to pay the fees, so you borrowed money from a bank that had high interest rates, and you borrowed money from relatives. You also put up personal items as collateral for the loan. Failure to pay your loan would result in the bank seizing this property. You believed you would make enough money working for Mister Clean in one month to pay off the debts, and then the remainder would help support yourself and your family.

You arrived in Florida on April 19, 2013 and were driven to an apartment. You were made to share an apartment with 15 other guest workers, and discovered that the apartment was not furnished as promised. You were expected to sit and sleep on the floor. The apartment had no cooking or eating utensils. You brought very little money with you from Jamaica. You and others pooled your resources to purchase food and find household items at Good Will.

You quickly developed back pain from sleeping on a hard floor and from your housekeeping duties. Finally, after complaining to Mister Clean about your living accommodations, they brought mattresses to the apartment, but they were not delivered until mid-June.

You stated you were told by Mister Clean that there was not enough work for two weeks. It appears that you did not work during the month of April. You became stressed that you would have no money to buy food, or to send home to pay off debts or support your family. You indicated that the money you brought with you from Jamaica ran out a week before you received your first paycheck.

You indicated you started working in May but for only two days per week. You stated there was ample work but that you were ordered to work faster, and then you were not paid for all the hours you worked. You were concerned that you would get injured working at a fast pace moving heavy objects and making up bunk beds which you described as unstable. You recalled one worker who did get injured on the job and Mister Clean did not help her seek treatment.

You indicated that rent was deducted from your first paycheck in May. You believed this to be unfair since you were sharing an unfurnished apartment with so many others. You indicated after the rent deduction, you were left with \$30; and one other time, you had a check worth \$0.00, but Mister Clean still expected you to pay for rent. You did not provide a summary of actual days worked, or the total amount of remuneration you received between April and August 2013.

You stated that Mister Clean did not give you your own keys to the apartment and that they could enter the apartments any time they wished to. You stated they controlled and opened your mail. You felt you had no privacy.

You indicated that you and other workers complained to each other about the working conditions, limited hours, housing conditions, and the debts you owed back in Jamaica. You talked about the unfair pay and the way management would treat the workers who complained about the working and living conditions. You stated that you complained to the owner and the Mister Clean supervisors about the low pay, unfair deductions, poor living conditions, but that you were ignored or felt patronized.

You stated that Chris from the Jamaican employment agency came to Florida in June to listen to the complaints from the guest workers. You stated that you told him that the lack of work and inadequate pay made it difficult to pay back the debts you took to get the job. You indicated that he responded the

recruitment money went to Rey and that someone had to make a profit. A supervisor at the meeting promised that things would get better in two weeks and to stop complaining; but there were no changes in either the living or working conditions.

You stated that Mister Clean personnel started acting more hostile to the workers and intimidated them in keeping quiet. You indicated that Rey made an insulting remark to you when you confronted him about one of your paychecks. Then you and others experienced being threatened with AWOL (absence without leave) if anyone left Mister Clean's employment to find another job. A supervisor threatened you with deportation and blacklisting if you continued to complain about the conditions or failed to perform the work that was assigned.

A group of workers protested in June which resulted in the guest workers receiving a note attached to their paychecks warning them they would be reported to ICE if they did not show up to work. You did not participate in the protest, but you did receive the note. The note made you feel that Mister Clean could carry out the threat and you did not want to be deported or blacklisted, so you stopped complaining, and continued to work for Mister Clean. You heard of one worker who was fired for calling in sick, and this was just another example of Mister Clean carrying out his threats to terminate employees who did not follow company policy. You and others experienced the same worry that you were not making enough money at Mister Clean to pay for essentials or to pay off the debts you owed in Jamaica.

You felt conflicted between your fear of deportation and your belief that you had the right to report Mister Clean's workplace violations to the trafficking hotline. You stated that you mustered the courage to call the hotline number which put you in contact with the NGA. Mister Clean management heard that workers were complaining to the NGA and requested that they stop. You feared that they would find out about your discussions with the NGA and have you deported. However, several workers staged a work stoppage on August 17, 2013, demanding a meeting with Rey to address their concerns about the poor working and living conditions, but Rey chose to close his office and refused to meet with the workers. You did not participate in this event. The work stoppage was followed by a formal complaint being filed with the DOL in the Tallahassee office. You heard that Rey told the remaining workers that your visa was cancelled and you were reported AWOL, and that the pictures of the protesters were posted in his office as an example to warn other workers not to talk to the NGA or face deportation. Once the complaint was filed with the DOL, Rey ordered the remaining guest workers to leave since there was no more work for them, and he told them to leave the apartments.

You stated that you suffered mentally, physically, and socially. You stated you were treated in an undignified manner by having to sleep on a floor, and not being provided with basic living necessities. You stated you worked in abusive conditions but did not cite any specific examples, other than your speculation that you could have been injured when rushed through your work. You stated that you did not get paid fairly or on time for the work performed. You believed you worked solely to pay Mister Clean's rent for an unfurnished apartment. You indicated you were threatened verbally on numerous occasions by Mister Clean management with deportation, blacklisting, and termination, when you and others complained about the working and living conditions. You stated that on one occasion the owner made an insulting remark to you.

You stated you were abused financially by having to take on much debt to obtain the job. You stated that you still have not paid off your debt and that the payments you have made are not enough to cover the additional interest that has accumulated on the loan. You stated that the bank has contacted your family and

has suggested they may have to seize the collateral you used to secure the loan. You have become stressed and depressed over the fact that you have not been able to meet your financial obligations. You felt fear with the possibility of deportation and never having another opportunity to work in the U.S. if you were blacklisted as Mister Clean threatened.

You stated that your unpaid debts have caused you to cry, lose sleep, and you have felt ashamed to have let down your family in your inability to provide for their welfare. You stated that you have lost the trust from family members to whom you still owe money.

You stated that your physical symptoms were from indigestion for lack of proper nourishment, and you lost weight. You complained of back pain from sleeping on the floor and from work-related duties. You stated that your back pain was severe and you missed work for a month. You did not indicate when this work absence occurred. You stated you were told by a doctor not to work as a housekeeper (statement #90), but provided no medical evidence of such advice. You stated that you cannot afford to see a doctor again but are taking over-the-counter medicine for pain. Your attorney indicated that you had to seek alternate employment in order to meet your basic needs and to send money to support your family. It is unclear what type of employment you obtained and how this employment may have contributed to your physical well-being.

You believe you will be harmed by Mister Clean personnel for speaking to the NGA, and you believe you will be harmed when you return to Jamaica for being one of the strikers who spoke out against Mister Clean.

Mr. [REDACTED] z, [REDACTED] of National Guest worker Alliance (NGA) stated he met with you, and described your harm as: "suffers from constant worry, stress, insomnia, fatigue, crying spells, feelings of hopelessness, digestive problems, and serious back pain as a direct result of the abuse she suffered from Mister Clean, all indicators of severe trauma"; "has struggled with self-confidence and self-worth because of the humiliation and abuse she suffered at Mister Clean." "Because of the economic challenges in Jamaica, Ms. [REDACTED] relies on her wages as an H-2B worker for income and to pay off her employment-incurred debts. This creates a lot of pressure for her." The "emotional pain she suffered from Mr. Clean dehumanized her. Her experience with NGA has given her a place to begin regaining confidence in people, and to build reasonable safety plans. Removing her from this safety net would pose material risk to her recovery." Mr. [REDACTED] z believes "that the criminal actions of Mister Clean amount to mental abuse and caused her substantial harm that would be exacerbated if she is not permitted to remain in the United States."

You submitted an unsigned letter dated June 14, 2014, from Total Family Urgent Care which indicated you were seen on February 26, 2014 and March 10, 2014 for lower back pain. The physician stated "She is unable to bend and can only lift up to 8 lbs. I hope this helps her keep her job duties as a housekeeper." The letter did not provide a diagnosis, prognosis, or treatment plan. The letter implied that you were still working as a housekeeper in 2014, even though your job with Mister Clean was terminated in August 2013, and you were advised by a doctor not to work as a housekeeper. The office visits occurred several months after leaving Mister Clean's employment which would indicate you voluntarily chose to continue to work in a profession that would cause you additional physical pain. You stated that you missed work for one month, and that a doctor advised you not to continue housekeeping. You have not submitted medical documentation to show whether your back pain pre-existed prior to Mister Clean employment, and whether you continued to work in the housekeeping industry despite advice to the contrary. As the letter

[REDACTED]

was unsigned and it did not provide significant detail regarding your overall physical well-being, it will be given little weight.

You submitted an undated letter from [REDACTED] H[REDACTED] who you claim is your partner in Jamaica. [REDACTED] stated that you had regular phone conversations in which you would tell h[REDACTED] about the working and living conditions at Mister Clean. [REDACTED] H[REDACTED] was re-stating what [REDACTED] had heard from you. Interestingly [REDACTED] H[REDACTED] disclosed details about your daily work schedule that you did not provide. [REDACTED] indicated that you sent [REDACTED] photos of yourself showing your weight loss. [REDACTED] reiterated your concern about being physically harmed if you return to Jamaica because you were labeled a troublemaker. [REDACTED] indicated that [REDACTED] visited with you, but provided no date of this meeting, and [REDACTED] stated that [REDACTED] was concerned for your general well-being. [REDACTED] indicated that you had difficulty sleeping and eating, were having nightmares, and were depressed. Since there is no indication when this letter was written, it does not provide information as to your present physical or mental soundness, and will be given little weight.

While your statement and Mr. [REDACTED]'s letter stated that you have suffered physical and emotional harm, the evidence fails to establish that your harm was substantial, and as a result of Involuntary Servitude and Witness Tampering. While Mister Clean personnel treated workers in a dishonorable manner, the record contains insufficient evidence that the mental harm you suffered was solely attributable to the qualifying criminal activity of Involuntary Servitude and Witness Tampering. As repeated several times throughout your personal statement, you expressed constant worry in your inability to pay back the recruitment debts you voluntarily incurred prior to coming to work for Mister Clean. Regulations at 8 C.F.R. § 214.14(b)(1) do not expressly reference crimes involving financial losses. The record does not show that anyone from the recruitment agency or from Mister Clean coerced you into accepting the job offer, nor did anyone coerce you into acquiring debt in order to accept the job offer.

You claimed that anxiety, stress, constant worry, insomnia, and lack of appetite were the results of your victimization, but you offered no probative or objective evidence from a medical or psychological evaluation that these conditions lead to serious or permanent physical or mental harm. The letter from Mr. [REDACTED] is not from a professional who can diagnose and evaluate an individual's mental health.

You have not submitted relevant or probative evidence to establish that you have suffered substantial mental health issues as a direct result of qualifying criminal activity. You have not demonstrated that the nature, severity, or duration of your employment with Mister Clean resulted in any permanent or serious harm to your appearance, health, or physical or mental soundness.

You have not submitted relevant or probative evidence to establish that you have suffered substantial physical or mental health issues of a prolonged nature that have been prohibitive to resuming a productive lifestyle.

In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefits sought. See *Matter of Brantigan*, 11 I. & N. Dec. 493 (BIA 1966).

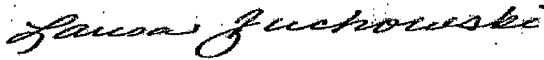
If you disagree with this decision, or if you have additional evidence that shows this decision is incorrect, you may file a motion or appeal of this decision by completing a Form I-290B, Notice of Appeal or Motion. You may also include a brief or other written statement. The Form I-290B must be filed within 33 days from the date of this notice. If a motion or appeal is not filed within 33 days, this decision is final.

You must send your completed Form I-290B and supporting documentation with the appropriate filing fee to:

U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

To obtain the Form I-290B, visit www.uscis.gov/forms. For the latest information on filing location, fee, and other requirements, refer to the Form I-290B instructions; review 8 CFR 103.3 or 103.5; call our National Customer Service Center at 1-800-375-5283; or visit your local USCIS office.

Sincerely,



Laura B. Zuchowski
Center Director

