

BA

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



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED]
EAC 01 102 53583

Office: VERMONT SERVICE CENTER

Date: NOV 03 2004

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center on March 29, 2002. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on November 6, 2002. A motion to reopen was timely filed. On April 26, 2004, the AAO granted the motion to reopen and denied the petition. The matter is now again before the AAO on a second motion to reopen. The motion will be denied.

The petitioner is a 36-year old native of the former Soviet Union and citizen of Kyrgyzstan 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. According to the evidence on the record, the petitioner wed her United States citizen spouse on October 9, 1999 in Kyrgyzstan, and resided with him for one week in Kyrgyzstan before her spouse returned to the United States. The petitioner entered the United States on June 9, 2000 as a CR-1 conditional permanent resident. On June 10, 2000, the petitioner was arrested in a domestic violence incident and was removed from her home. The petitioner filed the instant petition on February 29, 2001. In a decision dated March 29, 2002, the director denied the petition, finding that the petitioner failed to establish that she: (1) has resided in the United States with the citizen spouse; (2) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen spouse during the marriage; (3) entered into the marriage to the citizen or lawful permanent resident in good faith; and (4) is a person of good moral character.

Counsel for the petitioner states that "voluminous supplementary documentation which had been submitted back in December 2002 was not part of the record which was considered on appeal." Counsel attached copies of evidence he claims that he previously submitted to Citizenship and Immigration Services (CIS). The attachments are dated December 15, 2002 and December 26, 2002, after the AAO rendered a decision on the appeal.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). Counsel submits five additional affidavits and a letter from Dr. Donnangelo dated December 11, 2002. Such evidence submitted was previously available and could have been discovered or presented in the initial appeal.

On review, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

Furthermore, 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner does not submit any document that would meet the requirements of a motion to reconsider. The petitioner failed to cite any precedent decisions in support of a motion to reconsider. The petitioner does not

argue that the previous decisions were based on an incorrect application of law or policy. The petitioner's motion will be dismissed.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.