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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

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BS



FILE:



EAC 04 182 52116

Office: VERMONT SERVICE CENTER

Date:

DEC 21 2005

IN RE:

Petitioner:



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:



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, 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 summarily dismissed.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.”

The reason for the appeal as stated by counsel on the Form I-290B is:

Extreme cruelty is defined as “the infliction of mental or physical harm by one party to his/her spouse . . .” according to law.com dictionary. [REDACTED] spouse inflicted mental harm and as a result he has had to obtain psychological help.

As per requirement (7), it was extremely difficult for [REDACTED] and his spouse to maintain a civil marriage sine she was after all having an extramarital affair with another man. [REDACTED] reserves the right to include further agreement [sic] upon filing of his brief.

Counsel does not point to any specific evidence to support her claims that the petitioner’s spouse “inflicted mental harm” on the petitioner and engaged in an extramarital affair. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Further, despite counsel’s indication on the Form I-290B that a separate brief or evidence was being submitted to the AAO within 30 days, to date, more than six months after the appeal was filed, no further evidence has been submitted.¹

Inasmuch as the petitioner has failed to specifically identify any erroneous conclusion of law of statement or fact on the part of the director as a basis for the appeal, the regulations mandate the summary dismissal of the appeal.

ORDER: The appeal is dismissed.

¹ In a fax submitted by counsel on December 16, 2005, counsel confirmed that she did not submit a brief or additional evidence in support of the appeal.