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U.S. Citizenship
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Services

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FILE:

[REDACTED]
EAC 05 004 52453

Office: VERMONT SERVICE CENTER

Date: DEC 05 2008

IN RE:

Petitioner: [REDACTED]

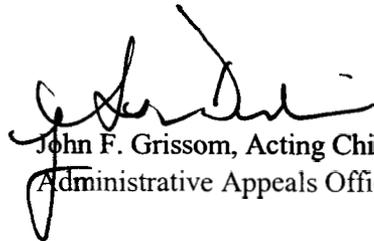
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be denied. The previous decision will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition on July 19, 2006, determining that the petitioner had not established that she entered into the marriage with her husband in good faith. The AAO concurred with the director's decision and added beyond the decision of the director that the petitioner had also failed to demonstrate that she had resided with her former husband.

The record in this matter includes: (1) the Form I-360 petition filed October 4, 2004, including the petitioner's statement in support of the petition; (2) the director's April 5, 2005 request for further evidence (RFE) on the issue of good faith marriage and joint residence; (3) the petitioner's response to the director's RFE including her May 31, 2005 affidavit; (4) the director's March 10, 2006 notice of intent to deny (NOID) the petition, wherein the director found that the record did not establish that the petitioner entered into the marriage in good faith and lacked evidence establishing the petitioner's joint residence with her former husband; (5) the petitioner's response to the NOID including her May 4, 2006 affidavit; (6) the director's July 19, 2006 denial decision finding that the petitioner had not established that she had entered into the marriage in good faith; (7) the petitioner's appeal including her August 16, 2006 affidavit; (8) the AAO's February 12, 2007 decision dismissing the appeal listing the evidence in the record including the petitioner's affidavits, affidavits from other sources, photographs, and copies of forms and documents related to the Form I-130 filed on the petitioner's behalf and the corresponding Form I-485 to adjust status; and (9) the petitioner's motion to reopen the matter.

On motion, counsel for the petitioner submits: the petitioner's fifth affidavit; a letter addressed to the petitioner and her former husband from the Immigration and Naturalization Service, dated June 16, 2003, scheduling an interview; and an additional photograph of the petitioner and her former husband that the petitioner indicates was taken in July 2001.

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."

The regulation at 8 C.F.R. § 103.5(a)(3) 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 has not submitted any new facts. Based on the plain meaning of “new,” a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding. The petitioner’s affidavit submitted on motion provides further details regarding the petitioner’s courtship, wedding, and life with her former husband; however, the petitioner does not explain why this information is forthcoming only at this time. The petitioner has been provided numerous opportunities to provide evidence of good faith marriage and of joint residence with her former husband. The affidavit submitted on motion after the director and the AAO pointed out the deficiencies and inconsistencies in the previous information submitted is not new and is not independent and objective evidence. The AAO observes that 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. Neither the June 16, 2003 letter nor the July 2001 additional photograph of the petitioner and her former husband is new evidence. Further, neither document provides additional probative evidence demonstrating the intent of the petitioner in entering the marriage or sufficient establish joint residence. In this matter, the petitioner has not provided evidence sufficient to reopen the prior proceeding.

Neither has the petitioner submitted any pertinent precedent decisions to establish that the AAO’s decision was based on an incorrect application of law or CIS policy based on the evidence of record at the time of the initial decision. The petitioner fails to establish that the decision was an incorrect application of the law by pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record. The evidence fails to satisfy the requirements of a motion to reconsider.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The regulation at 8 C.F.R. § 103.5(a)(4) states: “[a] motion that does not meet applicable requirements shall be dismissed.” Accordingly, the motion will be denied, the proceedings will not be reopened, and the previous decision of the AAO will be affirmed.

ORDER: The decision of the AAO is affirmed. The petition is denied.