U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 0 3 2004
EAC 01 201 50855

IN RE: Petitioner: [redacted]
Beneficiary

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:

SELF-REPRESENTED

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.

Marc Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and was subsequently appealed to the Administrative Appeals Office (AAO). The AAO summarily dismissed the appeal. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a native and citizen of the Dominican Republic 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.

The director denied the petition, finding that the petitioner failed to establish that he has been battered or the subject of extreme cruelty perpetrated by his U.S. citizen spouse and that he entered into the marriage in good faith. The AAO summarily dismissed the appeal because counsel for the petitioner failed to submit a brief and/or additional evidence as indicated on the Notice of Appeal.

On motion, the petitioner states that he is requesting that the AAO reopen the case because he was unaware that his counsel had failed to submit a brief. The petitioner submits additional evidence on motion.

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 [Citizenship and Immigration Services] policy."

The petitioner submits the following evidence on motion:

- A sworn statement from the petitioner's citizen spouse stating that she abandoned the marital home because of her jealousy.
- Three receipts for furniture listing the petitioner and his spouse.
- A letter of recommendation written by Jennie Viana.

Since the petitioner failed to state new facts or cite the reasons for reconsideration supported by pertinent precedent decisions, the motion may not be granted.

Even if the motion were granted, the evidence is insufficient to overcome the objections of the director.

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 met that burden. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.