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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 03 2010

EAC 06 163 51555

IN RE: [redacted]

PETITION: Petition for Immigrant Abused 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. After rejecting a subsequent motion to reopen or reconsider as untimely filed, the AAO reopened the matter on Service motion, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), for the purpose of entering a new decision. The previous decisions of the director and the AAO will be affirmed.

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 June 1, 2007 on the basis of his determination that the petitioner had failed to establish that she has a qualifying relationship with a United States citizen or lawful permanent resident.

The petitioner field a timely appeal, which the AAO dismissed on February 10, 2009. In its decision, the AAO concurred with the director's June 1, 2007 denial. The petitioner filed a motion to reopen or reconsider, which the AAO rejected on September 14, 2009 as untimely filed. On November 9, 2009, the AAO reopened the matter on Service motion, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), for the purpose of entering a new decision, as the September 14, 2009 decision had been mailed to the petitioner's previous residence.

Upon review, the AAO finds that the petitioner's submissions meet the requirements of neither a motion to reopen, nor a motion to reconsider. In making that determination, the AAO has reviewed both the petitioner's original submission on motion, which the AAO initially rejected as untimely filed, as well as her submission in response to the AAO's notice that it was reopening the matter on Service motion.

The regulation at 8 C.F.R. 103.5(a)(2) states, in pertinent part, the following:

> 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.

Based upon the plain meaning of the word "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.[1] Although the petitioner submits additional statements, she does not explain why any of the facts contained in these statements could not have been made in previous proceedings. The petitioner's submission contains no evidence that could be considered *new* under 8 C.F.R. 103.5(a)(2).

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.*

[1] The word "new" is defined as "1. Having existed or been made for only a short time . . . 3. Just discovered, found, or learned <*new* evidence> . . . ." *Webster's II New College Dictionary* 736 (Houghton Mifflin 2001)(emphasis in original).

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 these submissions, the petitioner has not met that burden. Accordingly, they do not qualify as a motion to reopen.

Nor do the petitioner's submissions qualify as a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part the following:

> 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's submissions do not qualify as a motion to reconsider. Again, in order for a submission to qualify as a motion to reconsider, that submission must, at the time it is filed, establish that the decision it seeks to have reconsidered was incorrect at the time it was issued. 8 C.F.R. § 103.5(a)(2). As noted previously, the petitioner has submitted additional statements on motion. However, those statements do not address the basis of denial: that the petitioner has failed to establish that she had a qualifying relationship with a United States citizen or lawful permanent resident. The petitioner's statements, therefore, do not establish that the AAO's February 10, 2009 decision was based upon an incorrect application of law or policy. Nor do her statements establish that the AAO's decision was incorrect based upon the record before it at the time it issued its decision, either. Accordingly, the petitioner's submissions do not qualify as a motion to reconsider.

In accordance with this discussion, the AAO finds that the petitioner's submissions satisfy the requirement of neither a motion to reopen nor a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the petitioner's submissions will be dismissed, the proceedings will not be again reopened or reconsidered, and the decisions of the director and the AAO will not be disturbed.

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.

ORDER: The motion is dismissed. The previous decisions of the director and the AAO are affirmed.