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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 19 2010

EAC 06 220 50485

IN RE: [redacted]

PETITION: Petition for Special 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:

[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.

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. The matter is again before the AAO on motion to reopen. The motion will be dismissed and 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 February 29, 2008, on the basis of his determination that the petitioner had failed to establish that he is a person of good moral character. The petitioner field a timely appeal, which the AAO dismissed on April 29, 2009. Counsel filed the instant matter on May 28, 2009, and marked the box at Part 2 of the Form I-290B to indicate that he was filing a motion to reopen. Upon review, the AAO finds that counsel's submission does not satisfy the requirements of a motion to reopen.

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]

On motion, counsel submits the following:

- A May 26, 2009 self-affidavit from the petitioner;
- A "Criminal Record Search" from Johnston County, North Carolina, dated May 4, 2009;
- A "Criminal Record Search" from Wake County, North Carolina, dated May 4, 2009; and
- Counsel's May 26, 2009 brief.

None of this evidence may be considered "new." Rather, the AAO finds all of this evidence to have been previously available.

The petitioner's self-affidavit contains no facts or assertions that were previously unavailable. Nor were the "Criminal Record Searches" from Johnston and Wake Counties, North Carolina that counsel submits on motion previously unavailable. Nor does counsel's brief contain any facts, assertions, or arguments that were previously unavailable.

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[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).

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 this motion, the self-petitioner has not met that burden. Counsel's submission does not qualify as a motion to reopen.

In accordance with this discussion, the AAO finds that the petitioner's submission fails to satisfy the requirement of a motion to reopen. 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 motion will be dismissed, the proceedings will not be again reopened, 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.