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



U.S. Citizenship  
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FILE:

EAC 06 047 51034

Office: VERMONT SERVICE CENTER

Date: **MAR 12 2010**

IN RE:

Petitioner:

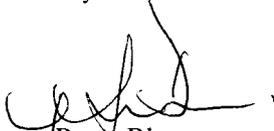
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

  
Perry Rhew  
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 dismissed. The previous decision will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a United States lawful permanent resident.

The director issued a Notice of Intent to Deny (NOID) the petition on June 18, 2007 notifying the petitioner of the deficiencies in the record and affording the petitioner the opportunity to provide evidence to establish that she is a person of good moral character. Upon review of the petitioner's response, the director denied the petition determining that the petitioner had not provided police clearances for all her aliases and had not provided evidence resolving the conflicting statements regarding the illegal use of the petitioner's passport. Counsel for the petitioner submitted a motion to reopen and reconsider the matter and provided evidence of police clearances for the various names the petitioner had used in the past. Counsel also provided the petitioner's affidavit. Upon review of the petitioner's motion and further evidence, the director denied the petition on February 11, 2008. The director determined that the petitioner had not provided evidence establishing her lack of culpability in the illegal use of her passport. The director determined that the petitioner was subject to the provisions of Section 101(f) and thus had not established that she is a person of good moral character.

Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal, and provided the petitioner's mother's March 18, 2008 affidavit in support of the appeal. Upon review of the totality of the evidence in the record, including the affidavit submitted on appeal, the AAO affirmed the director's decision and dismissed the appeal.

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.

On motion, counsel for the petitioner asserts that the petitioner is a person of good moral character and that events that happened more than ten years ago should not be used to judge her moral character now. Counsel requests that the AAO again consider the petitioner's affidavit and the affidavit of her mother. Counsel claims that a review of the petitioner's entire record shows that the

petitioner has been truthful to United States Citizenship and Immigration Services (USCIS) and that the petitioner is at a loss as to what other evidence she might provide to show that she did not give her passport and visa to her sister so that her sister could enter the United States illegally. Counsel also notes that the petitioner is the mother of two United States citizen children.

The record on motion does not provide any new facts supported by affidavits or other relevant documentary evidence sufficient to reopen the matter. The AAO detailed the deficiencies of the information submitted on appeal as well as the information before the director and articulated its reasoning in its previous decision regarding the petitioner's ineligibility for this benefit. The record on motion does not include any further information or evidence that overcomes the AAO's prior decision. The petitioner has not submitted any new relevant and probative facts. 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. 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 USCIS 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 dismissed, the proceedings will not be reopened, and the previous decision of the AAO will be affirmed.

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