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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
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Services

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FILE:

[REDACTED]
EAC 05 097 52088

Office: VERMONT SERVICE CENTER

Date:

MAR 29 2010

IN RE:

Petitioner: [REDACTED]

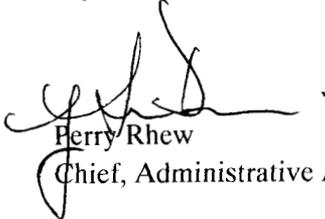
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[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, 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 and 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 under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (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, determining that the petitioner failed to establish that he had entered into the marriage in good faith. The AAO concurred with the director's determination that the petitioner has not established that the petitioner entered into the marriage in good faith. The AAO also determined, beyond the decision of the director, that the petitioner had not established the requisite battery or extreme cruelty and had not established that he resided with the claimed abuser.

On motion, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, checking the box indicating he was filing an appeal and that his brief and/or evidence would be submitted to the AAO in 30 days. Counsel provides a statement on the Form I-290B, which reads:

We are requesting 30 days extension to file brief. We have an [sic] extensive facts that are to be disputed and challenged. The application of the law to the facts of our case is erroneous in several aspects. AAO took almost 2 years to review voluminous facts, documents and testimonies. Within next 30 days, we will provide in detail erroneous conclusion of law and facts of the case in a brief. Thank you.

Even if considering that the petitioner's counsel had checked the correct box on the Form I-290B, the petitioner's motion does not meet applicable requirements. Counsel indicated that an additional 30 days was needed to file a brief. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The *additional evidence must comprise the motion. See 8 C.F.R. §§ 103.5(a)(2) and (3).* Counsel's statement on the Form I-290B¹ is insufficient to require reopening this matter. Accordingly, the motion must be dismissed for failing to meet applicable requirements.

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."

¹ The AAO also observes that the voluminous record in this matter does not include an additional brief submitted by petitioner's counsel in the Form I-360 matter. The only information in the record that post dates counsel's Form I-290B is a May 15, 2009 oral decision of an Immigration Judge and the petitioner's new counsel's request for an extension to submit a brief in response to the Immigration Judge's decision.

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 AAO reiterates that the petitioner has not submitted any new facts and has not submitted any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or United States Citizenship and Immigration Services (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 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.

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 and the petition is denied.