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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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FILE:  Office: VERMONT SERVICE CENTER Date: **OCT 26 2010**

IN RE: Petitioner: 

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal because the petitioner failed to demonstrate that he had a qualifying relationship as the spouse of a U.S. citizen within two years of the filing of the instant petition. The matter is again before the AAO on a motion to reconsider. The motion will be dismissed and the AAO decision, dated May 25, 2010, will be affirmed.

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 because the petitioner did not establish that he had a qualifying relationship as the spouse of a United States citizen within two years of the petition's filing on August 6, 2007, as his marriage to T-S-¹ was terminated on May 3, 2005.²

On motion, the petitioner asserts, in part, that section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act "does not specifically eliminate previous petitions or state that [the] instant petition should be used to calculate the [2-year] limit."

The AAO acknowledges the petitioner's assertion on motion. Again, as stated in the AAO's May 25, 2010 decision, the petitioner filed the instant I-360 petition more than two years after his marriage to T-S- was terminated. Thus, he is unable to establish that he had a qualifying relationship as the spouse of a U.S. citizen within two years of the petition's filing, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

The petitioner's assertion on motion does not satisfy either the requirements of a motion to reopen or a motion to reconsider. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) 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 U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

As previously stated, a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. Here, the motion contains no evidence entailing new facts that were previously unavailable. Further, the record does not contain affidavits or other documentary evidence in support of a motion to reopen. 8 C.F.R. § 103.5(a)(2).

¹ Name withheld to protect individual's identity.

² Supreme Court of the State of New York, Matrimonial Part 4, New York County, Index # [REDACTED]

The evidence also fails to satisfy the requirements of a motion to reconsider. The petitioner does not support his assertion by any pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed. The previous decision of the AAO, dated May 25, 2010, is affirmed. The petition is denied.