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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: MAY 08 2012 OFFICE: VERMONT SERVICE CENTER



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:



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, with a fee of \$630. 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 service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed its decision dismissing the appeal in response to a subsequent motion to reopen. The matter is again before the AAO on a motion to reconsider. The motion to reconsider will be dismissed. The appeal will remain dismissed. The petition will remain 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 citizen of the United States.

The director denied the petition July 2, 2010 on the basis of his determination that the petitioner failed to establish: (1) her husband subjected her to battery or extreme cruelty during their marriage; and (2) that she married her husband in good faith. Counsel filed a timely appeal, which we dismissed on December 15, 2010. Although we withdrew the director's finding that the petitioner failed to establish she was subjected to battery or extreme cruelty by her husband during their marriage, we agreed the petitioner had failed to establish that she married him in good faith. On September 15, 2011 we granted counsel's subsequent motion to reopen and affirmed our prior decision. Counsel filed the instant motion to reconsider on October 17, 2011.

Counsel's submission does not qualify as a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(3) states that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision to be reconsidered was based on an incorrect application of law or Service policy. However, counsel does not support her motion with any pertinent precedent decisions to establish that our prior decision was based on an incorrect application of law or Service policy. Accordingly, counsel's submission does not qualify as 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." Because counsel's motion to reconsider does not meet the applicable requirements set forth at 8 C.F.R. § 103.5(a)(3), it will be dismissed pursuant to 8 C.F.R. § 103.5(a)(4). These proceedings will not be reconsidered, and our prior decision will not be disturbed.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. at 375. She has not met her burden and the motion will be dismissed.

ORDER: The motion is dismissed. The September 15, 2011 decision of the Administrative Appeals Office is affirmed and the petition remains denied.