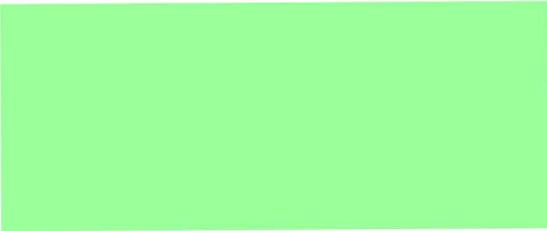
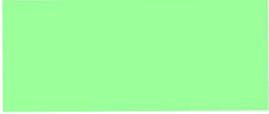


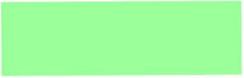


U.S. Citizenship
and Immigration
Services

(b)(6)

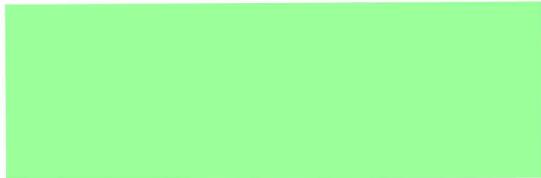


Date: **APR 24 2014** Office: VERMONT SERVICE CENTER File: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen or reconsider. The motion will be dismissed. The previous decision will be affirmed. The petition will remain denied.

The petitioner seeks immigrant classification pursuant to 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 for failure to establish that the petitioner entered into marriage with his United States citizen spouse in good faith, and that she battered or subjected him to extreme cruelty during this marriage. The AAO concurred with the director’s determinations and found, beyond the director’s decision, that the petitioner failed to establish a qualifying spousal relationship with a U.S. citizen and corresponding eligibility for immediate relative classification because he divorced his former spouse prior to filing the petition and he failed to establish a causal connection between any abuse and the divorce. The AAO dismissed the petitioner’s subsequent appeal. The previous AAO decision is incorporated here by reference.

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).

The petitioner has not submitted any new evidence for a motion to reopen because the evidence attached to the motion brief are duplicates of previously submitted documents. On motion to reconsider, counsel contends that it is an abuse of discretion for the AAO to state that the self-petitioner is required to provide a statement from the abuser spouse who filed the prior Form I-130 to establish the self-petitioner’s entry into marriage in good faith. Review of the AAO’s previous decision shows that the AAO did not state that the self-petitioner must submit any documentation other than the regulatory prescribed evidence at 8 C.F.R. § 204.2(c)(2)(vii) to demonstrate his good-faith entry into the marriage. Counsel does not cite any specific language in the AAO’s prior decision to support the claim that the AAO required a statement from the abuser spouse to demonstrate the self-petitioner’s good faith entry into marriage.

Counsel argues that the AAO’s statement, that the Form I-130 petitioner must show only proof of citizenship and validity of the marriage, is incorrect because the regulation at 8 C.F.R. § 204.2(a)(1)(ii) states that the Form I-130 petitioner has the burden of proof in showing that the marriage was not entered into for the purpose of evading the immigration laws.¹ Counsel contends

¹ 8 C.F.R. § 204.2(a)(1)(ii) which states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter

that approval of the Form I-130 coupled with the other evidence in the record demonstrates the self-petitioner's good faith entry into marriage. The evidentiary requirements cited by counsel at 8 C.F.R. § 204.2(a)(1)(ii) apply in cases of marriage fraud. Counsel does not state on motion, and the record does not show, that marriage fraud was an issue in the adjudication of the prior Form I-130 petition. In its prior decision the AAO stated that the Form I-130 petition was a separate adjudication in which the petitioner's former wife bore the burden of proof to establish her citizenship and the validity of their marriage. Section 201(b)(2)(A)(i) of the Act; 8 C.F.R. §§ 204.1(g), 204.2(a)(2). The AAO further stated that for the Form I-360 petition, the self-petitioner bears the burden of proof to establish not only the validity of their marriage, but also his own good-faith entry into their union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act. Counsel does not cite any binding precedent decision or other legal authority establishing that the AAO incorrectly applied the pertinent law or agency policy. Nor does counsel establish that the AAO's decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel asserts that the AAO erred in stating that without probative statements from the petitioner, the photographs of the wedding ceremony alone are not sufficient to establish the petitioner's intentions in marrying his former wife. Counsel asserts that in addition to the wedding photographs the petitioner provided his own affidavit and affidavits from social workers who personally knew the self-petitioner and the abuse that he experienced. Counsel asserts that preponderance of the evidence in the record demonstrates that the petitioner entered into marriage in good faith, and was battered or subjected to extreme cruelty by his former wife during their marriage. Counsel repeats the evidence previously submitted on appeal and does not cite any binding precedent decision or other legal authority to show an incorrect application of relevant law or agency policy by the AAO. Counsel does not demonstrate that the AAO's determination was incorrect based on the evidence of record at the time of the initial decision.

Accordingly, the motion to reopen and reconsider must be dismissed. *See* 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be dismissed).

ORDER: The motion is dismissed. The decision of the Administrative Appeals Office, dated December 12, 2013, is affirmed and the petition remains denied.

into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy. .

...