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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 and Immigration Services

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JUN 03 2009

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

EAC 06 183 50745

IN RE: Petitioner: [redacted]

PETITION: Petition for Immigrant Battered 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).

John F. Grissom
Acting 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 denied. 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 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 on November 22, 2006, determining that the petitioner had not established that his wife subjected him to battery or extreme cruelty. The AAO concurred with the director's decision. The AAO noted inconsistencies in the petitioner's affidavits regarding the time the claimed abuse began. The AAO specifically observed that the petitioner's statements and the affidavits submitted on his behalf did not describe battery or extreme cruelty perpetrated by the petitioner's spouse; rather, the petitioner's statements and some of the affidavits submitted on his behalf described the petitioner's spouse as a drug addict who eventually abandoned the marital home. The AAO considered the Psychoemotional and Marital Dynamics Assessment prepared by , and noted that the evaluation was based on a single interview with the petitioner. The AAO did not question the expertise of but upon review found that testimony failed to establish that the behavior of the petitioner's spouse rose to the level of battery and/or extreme cruelty as set out at 8 C.F.R. § 204.2(c)(1)(vi).

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 submits: a brief; the petitioner's daughter's affidavit; and the credentials of

Counsel notes that the petitioner's daughter was 11 years old when the Form I-360 was filed and that she and her sister went to live with their natural mother "after these events" and after a period of emotional healing for the children, the petitioner's oldest daughter "can talk about the events that haunted her during that period of her life." Counsel presents the petitioner's daughter's affidavit as new material facts that were not available at the time of filing. The petitioner's daughter states: that her dad never asked her to write a letter before probably because he did not want to hurt her and her sister more; that she recalls an incident when her stepmother (the claimed abusive spouse) pushed

her against the wall and used bad language; that she was scared of her stepmother because her stepmother did not know what she was saying or doing; that her stepmother would take drugs in front of her and her sister; that her stepmother would steal things to buy marijuana or any type of drugs; that one day she told her sister not to open the door when her stepmother knocked on the door and when their stepmother got in she almost killed them but they ran to the bedroom to wait for their father; and that when her dad told her and her sister that his spouse would not be coming back they were happy.

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding. The petitioner's daughter's affidavit submitted on motion does not present evidence that was not available and could not have been presented or discovered in the previous proceeding. The AAO notes counsel's claim that the lack of the daughter's affidavit in earlier proceedings was caused by the daughter's need for emotional healing and implies that the daughter is only now able to talk about those events; however the petitioner's daughter states that she did not provide a statement earlier because her father did not ask her to provide a statement probably to protect her. The AAO discounts counsel's interpretation of the petitioner's failure to submit his daughter's affidavit as inconsistent with the petitioner's daughter's statement and also without a factual foundation. The AAO observes that counsel has failed to present her credentials establishing her training to evaluate the petitioner's daughter's emotional well-being. The AAO finds the failure of the petitioner to ask his daughter for a statement to be presented in the prior proceedings insufficient as a basis to reopen these proceedings.

Moreover, the AAO does not find that the information in the petitioner's daughter's affidavit on motion includes probative facts. The information the affiant provides, while confirming that her stepmother abused drugs, does not reflect that the petitioner's spouse intentionally abused the children or subjected them to emotional harm that constitutes extreme cruelty. The AAO finds that the petitioner's daughter elaborates on her father's general statements regarding his spouse's conduct but that the petitioner's daughter acknowledges that her stepmother did not know what she was doing or saying because she was under the influence of drugs. The affiant's general statement that her stepmother "almost killed us" is without proper detail and context. It is unclear when this happened and the circumstances surrounding the incident are not set out in detail. Likewise, the affiant does not provide chronological information regarding the incident of her stepmother pushing her against a wall and using bad language. The record does not clearly set out when the children were in the petitioner's marital household and when they were with their natural mother. The information in the petitioner's daughter's affidavit while confirming that the petitioner's spouse's drug-induced behavior toward the affiant and her sister was abhorrent does not establish that the petitioner's spouse subjected either the petitioner or his children to extreme cruelty as set out in the regulation at under 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's daughter's affidavit does not include probative testimony that she, her sister, or her father was the victim of any act or threatened act of violence, including any forceful detention, which resulted or threatened to result in physical or mental injury. The limited information in the petitioner's daughter's affidavit regarding two claimed incidents of violence against her and her sister are insufficient in probative information to establish an overall pattern of violence in the household.

The AAO has reviewed the credentials of LMHC; but does not consider the credentials new information. In addition, the AAO observes that the AAO did not question the expertise of in its previous decision but simply found that testimony failed to establish that the behavior of the petitioner's spouse rose to the level of battery and/or extreme cruelty as set out at 8 C.F.R. § 204.2(c)(1)(vi). The credentials submitted do not meet the requirements necessary to reopen this matter.

Counsel asserts that United States Citizenship and Immigration Services (USCIS) failed to consider the effects of the petitioner's spouse's drug addiction on family members and its psychological effects on the petitioner and his children. Counsel asserts that the petitioner's spouse "became a drug abuser in the course of their marriage and she did not seek help for her addiction problems and chose to destroy her marriage and hurt her spouse and children emotionally and psychologically." Counsel notes that the collateral damage that drug abuse can have on an addict's loved ones is documented in a 2006 survey conducted by Gallup for *USA Today* and HBO. Counsel contends that the petitioner's spouse exercised control by terror on this family. Counsel offers her conclusion that the petitioner "was subjected to extreme abuse, psychological and emotional with intentional and premeditated acts which met the standards established under 8 C.F.R. § 204.2(c)(1)." Counsel also offers her conclusion that the petitioner did not seek medical help because he was never injured physically and did not seek psychological help because he was ashamed of being a victim. Counsel further concludes that the petitioner and his children suffered extreme abuse at the hands of the petitioner's spouse, "rooted in acts of extreme cruelty: choosing to live a degrading life style when she promised otherwise to her husband and his two young children in a marital vow[,] leading an uncontrolled life of drug addiction and violence[,] dominat[ing] and control[ling] the life of her family."

Counsel's assertions are insufficient to require a reopening of this matter. Counsel asserts that the petitioner's spouse did not seek help for her addiction problems which contradicts references in the record to the petitioner's spouse's involvement in recovery programs. Counsel fails to provide her credentials to offer opinions on the petitioner's spouse's behavior and whether the petitioner's spouse's conduct was premeditated, chosen, or intentional or were the tragic consequences of the petitioner's spouse's drug addiction. The AAO acknowledges the reality of collateral damage that drug abuse has on an addict's loved ones; however such emotional and psychological collateral damage does not constitute extreme cruelty for VAWA purposes. Counsel does not provide any evidence to substantiate her contentions and conclusions that the petitioner's spouse exercised control by terror on the family, that the petitioner did not seek psychological help because he was ashamed of being a victim, or that the petitioner's spouse's behavior was rooted in acts of extreme cruelty consisting of: choosing to live a degrading life style; leading an uncontrolled life of drug addition and violence; and controlling the life of her family. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

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 counsel 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. Counsel 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 denied, the proceedings will not be reopened, and the previous decision of the AAO will be affirmed.

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