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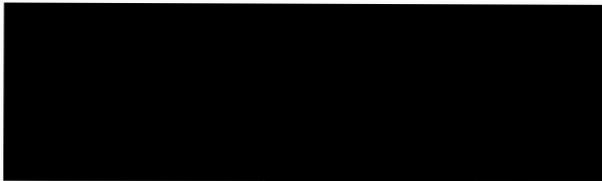
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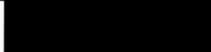
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship
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FILE:



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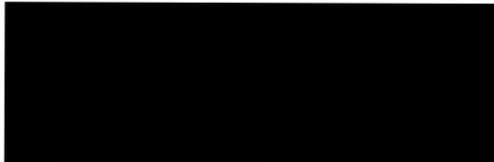
IN RE:

Petitioner:



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:



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 September 28, 2006, determining: that the petitioner had not established that her spouse subjected her to battery or extreme cruelty; and that the petitioner had not established that she entered into the marriage in good faith. The AAO concurred with the director's decision.

Regarding the abuse claim, the AAO noted inconsistencies between the petitioner's February 8, 2006 and July 10, 2006 affidavits and the information provided by the Women in Distress Organization's October 18, 2006 letter submitted in support of the appeal. The AAO determined that the petitioner had not provided consistent probative evidence establishing that her spouse had subjected her to battery or extreme cruelty.

Regarding the petitioner's good faith entry into the marriage, the AAO found that the petitioner had not provided the authority allowing her to sign both the Form 8453, U.S. Individual Income Tax Declaration for an IRS e-file Return, for 2004, and the Form SC 1040, South Carolina Individual Income Tax Return, for 2004 on behalf of herself and her husband. The AAO found that it is not clear how the petitioner's signature for both herself and her spouse on these forms established good faith in the marriage. The AAO noted the petitioner's enrollment in two life insurance policies after her separation from her husband but found that the petitioner had not explained why she would name her spouse as the beneficiary after their separation. The AAO also noted: that the petitioner's May 16, 2005 bank statement showed the petitioner's address at a location different than her claimed marital home¹ although the petitioner stated that she had not separated from her husband until May 20, 2005; and that the petitioner's August 20, 2005 bank statement contained the address of the petitioner's claimed marital home again although the petitioner stated that she had separated from her husband on May 20, 2005. The AAO determined that the record did not include sufficient probative evidence, including the petitioner's testimony, which established that she entered into the marriage in good faith.

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:

¹ The petitioner noted that she and her spouse lived with his parents in their home in an effort to save money.

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 does not find that the petitioner has submitted new facts. 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 has presented her affidavit in an attempt to explain the inconsistencies noted in the AAO’s decision. Although the motion will not be granted, the AAO will briefly discuss the petitioner’s attempt to clarify the inconsistencies in the record. On motion, counsel for the petitioner submits: a statement; the petitioner’s affidavit; and two affidavits signed by her husband.

Regarding the claimed abuse, the petitioner states: that the experiences listed in the Women in Distress organization’s October 18, 2006 letter is in error and that the information in her affidavits sets forth the circumstances of the abuse; that neither she nor her attorney read the letter prior to its submission and so did not notice that she had been given the wrong letter; and that her statement that her spouse forced her to have sex, almost hit her, and was a drug addict who was violent provides the correct information. The petitioner’s husband’s affidavit includes the statement: “I was not completely honest with my wife about myself because of these hidden fact [sic] our relationship starts [sic] to deteriorate I was a [sic] abusive to her which led to separation.”

The AAO acknowledges rape or “violent sex” constitutes battery and extreme cruelty; however, the AAO does not find the petitioner’s explanation regarding the Women in Distress organization’s October 18, 2006 letter credible. The October 18, 2006 letter not only does not include any mention of rape, but also it emphasizes that the petitioner reported at intake that her husband “had pushed her, slapped her, struck her, threaten to kill [sic] her, threw objects at her, kept her isolated and verbally and emotionally abused her” and that her “husband uses alcohol frequently.” The AAO does not accept the petitioner’s “explanation” that she and her counsel failed to read or notice that the information in the letter significantly deviated from the petitioner’s claims to United States Citizenship and Immigration Services (USCIS). The AAO observes that the petitioner has not submitted any clarifying information from the Women in Distress organization indicating that their letter was based on another individual’s file or was based on anything other than the petitioner’s own statements to them. It is the inconsistent information in the file between the petitioner’s testimony to USCIS and her testimony to the Women in Distress organization that diminishes the probative value of her claim that she was raped or forced to engage in violent sex. When the record includes only the petitioner’s testimony regarding abuse and the testimony is inconsistent, the petitioner has not met her burden of proof.

The AAO acknowledges counsel’s assertion that both the petitioner’s husband and her mother-in-law have indicated that “abuse” occurred in the marriage; however, neither the petitioner’s husband nor her mother-in-law provide the definitive detail necessary to ascertain whether their general understanding of “abuse” coincides with the statutory and regulatory definition of abuse. Neither the petitioner’s

husband nor her mother-in-law indicates any knowledge that the petitioner has claimed that she was raped and forced to engage in violent sex with her husband nor do their statements provide other detailed information of behavior that would constitute battery or extreme cruelty. Upon review of the information in the record regarding abuse, the AAO determines that the petitioner has not clarified the information in the record and has not provided any “new” facts that would require the reopening of this matter.

Regarding her good faith entry into marriage, the petitioner states: that her husband authorized her to sign his name on the tax papers on his behalf and references her husband’s affidavit declaring that he had authorized her to sign the documents; that she listed her husband on her life insurance policy because he was the only immediate family she had living in the United States and did not know that she could list individuals that were not living in the United States; and that the addresses on the bank statements resulted from her attempt to close one account on May 12, 2005 and in doing so noting her new address; and that when she opened her checking account on July 16, 2005 she used the address of her marital home because she had been having trouble receiving mail at her new address and she knew that her mother-in-law would give mail to her.

The AAO finds that the petitioner has not submitted any new facts to establish that she entered into the marriage in good faith. The AAO acknowledges the petitioner’s husband’s affidavit submitted on motion wherein he indicates: when the couple met; that they started corresponding with one another; went out on several occasions; and that an intimate relationship developed. The AAO also acknowledges the petitioner’s husband’s affidavit indicating that he authorized the petitioner to sign his name to tax forms. Neither of the petitioner’s husband’s affidavits presents new facts not already in the record and previously considered. Neither of the petitioner’s husband’s affidavits submitted on appeal demonstrate the petitioner’s intent in entering into the marriage. The petitioner’s husband’s affidavit provides general information regarding the couple’s courtship and marriage and does not provide definitive detail that would establish the *bona fides* of the marriage. Authorizing another individual to sign a name on a tax form also does not demonstrate that the petitioner’s intent in entering the marriage was made in good faith; rather it raises questions regarding the circumstances of the event and diminishes the probative value of the document signed that could otherwise be useful in establishing good faith.

Similarly, the petitioner’s explanations regarding the different addresses and the timing of the different addresses used for bank account statements do not present new evidence regarding the circumstances of the marriage and the petitioner’s intent in entering into the marriage. Moreover, the petitioner’s explanation does not assist in establishing that the petitioner entered into the marriage in good faith; instead, the explanation raises additional questions regarding the circumstances of the marriage and the relationship between the parties concerned. Likewise, the petitioner’s naming of her spouse on a life insurance policy in which she enrolled subsequent to her separation is not adequately explained by indicating that she did not know any better. Again, naming a spouse as a beneficiary on a life insurance policy after separation raises questions about the actual circumstances of the petitioner’s relationship and whether the policy was entered into for any purpose other than its documentary value in

immigration proceedings. Upon review of the information in the record, the petitioner has not submitted any new probative information establishing that she entered into the marriage in good faith.

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.

Counsel has not 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 information submitted on motion 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.