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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

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**U.S. Citizenship
and Immigration
Services**

B9

FILE:

[REDACTED]
EAC 06 197 51090

Office: VERMONT SERVICE CENTER

Date:

JUN 09 2009

IN RE: Petitioner: [REDACTED]

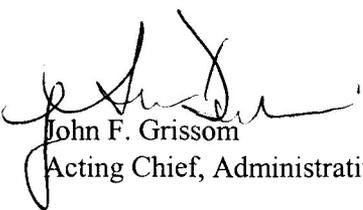
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 June 26, 2007, determining that the petitioner had not established that she had resided with her spouse and that she had not established that she had entered into the marriage with her spouse in good faith. The AAO concurred with the director's decision. The AAO specifically observed that the petitioner had failed to provide any documents that showed her residing at the claimed joint residence in which she was jointly named on the account, such as a bank statement or a letter from the bank, statements from the cell phone company, income tax returns for jointly filed tax returns, or her own 2003 Form W-2 listing her address as the claimed joint residence. The AAO also noted the deficiencies of the affidavits submitted, including the petitioner's affidavit on the subjects of joint residence and the petitioner's intent upon entering into the marriage. The AAO observed that not only had the petitioner failed to submit documentation that she would have access to as an individual named on joint accounts, but she also failed to offer any explanation regarding her failure to do so.

On motion, counsel for the petitioner submits: the petitioner's affidavit; the affidavits of [REDACTED] and [REDACTED] and copies of the petitioner's unsigned tax returns for the 2006, 2007, and 2008 years listing her filing status as single. Neither counsel nor the petitioner addresses the deficiencies of the record as identified by the AAO in its February 24, 2009 decision. The affidavits of [REDACTED] and [REDACTED] discuss the claimed abuse but do not address the issues of joint residence or the petitioner's intent in entering into the marriage.

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.

The petitioner has not submitted any 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's affidavit submitted on motion and the affidavits submitted on her behalf provide no further details regarding the petitioner's courtship, wedding, and life with her former

husband and no further information regarding the claimed joint residence. The petitioner's 2006, 2007, and 2008 tax returns confirm that the petitioner's filing status is single, but do not relate to the pertinent time period for demonstrating her claimed joint residence and good faith in entering into the marriage. 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 the petitioner submitted any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy based on the evidence of record at the time of the initial decision. The petitioner 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.