

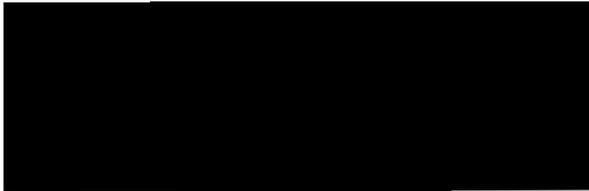
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



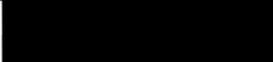
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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 12 2009

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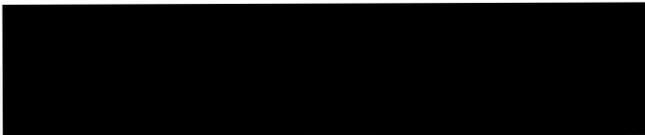
IN RE:

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 January 23, 2007, determining that the petitioner had not established that she married her U.S. citizen spouse in good faith. The AAO concurred with the director's decision.

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 two-page statement. Counsel asserts that although one of the affidavits previously submitted contained inconsistencies and another affidavit was from an individual who lived far away from the petitioner, the AAO failed to give any portion of the affidavits evidentiary weight. Counsel asserts that the petitioner did not provide names of restaurants she and her former spouse visited because the restaurants were nondescript or fast food restaurants. Counsel asserts that the life insurance policy purchased after the petitioner stated her former husband abandoned her was not given any evidentiary weight.

Counsel's assertions are insufficient to require a reopening of this matter. Counsel does not provide any new facts supported by affidavits or other documentary evidence. 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 AAO's review of the record in the previous proceeding included a review of the affidavits submitted in support of the petitioner and a review of the life insurance policy purchased after the petitioner's former husband abandoned her. The AAO upon review of the record, including these documents, did not find sufficient probative relevant evidence to establish that the petitioner entered into the marriage in good faith. The AAO articulated its reasoning in the previous decision. The record on motion does not include any further information or evidence that overcomes the AAO's prior decision. 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.