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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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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: APR 27 2010
EAC 06 220 50301

IN RE: Petitioner: [Redacted]

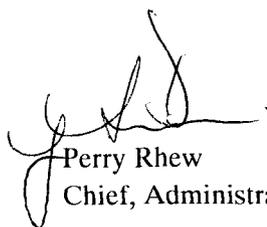
APPLICATION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF APPLICANT:
[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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and 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 dismissed. The petition will be 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.

On September 30, 2008, the director denied the petition, determining that the petitioner had not established that she is a person of good moral character. On appeal, counsel submitted a brief and re-submitted previously provided documentation. Upon review of the totality of the record, the AAO affirmed the director's decision that the petitioner had not established that she is a person of good moral character and found beyond the decision of the director that the petitioner had not established that she entered into the marriage in good faith.

On motion, counsel for the petitioner provides the petitioner's sworn statement dated August 2, 2009, five letters attesting to the petitioner's good moral character, one letter attesting to the abuse suffered by the petitioner, and a letter from an individual living with the petitioner and her former spouse during the 2003-2004 time period. Counsel also includes photocopies of a check card issued to the petitioner's former spouse valid to August 2003 and a second check card issued to the petitioner's former spouse valid to August 2005. Counsel re-submits photographs of what appears to be the petitioner and her former spouse's wedding reception.

The information submitted on motion does not satisfy either the requirements of a motion to reopen or a motion to reconsider. 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). 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. 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 United States 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).

On the issue of good moral character, the AAO in its previous decision reviewed the circumstances of the applicant's arrest that occurred within three years of the petitioner's filing the Form I-360. The AAO noted that the arrest warrant revealed that the petitioner was involved in a verbal dispute with another woman and when the other woman walked away from the petitioner, the petitioner picked up a kitchen knife, put it to the face of the other woman, and stated "this conversation is not over! Either you or me are going to end it." According to the police report, the petitioner then threw down the knife and started hitting the other woman when she realized the other woman had called the police. The petitioner was arrested for this conduct on December 5, 2003. The AAO noted further that the applicant had not provided an explanation of this incident and had not provided a personal statement attesting to her good moral character.

In the petitioner's personal statement submitted on motion, the petitioner provides her version of her arrest on December 5, 2003. The petitioner explains that she moved into "this lady's room" and that the

lady started with sexual insinuations indicating that she wanted a sexual relationship with the petitioner. The petitioner indicates further that the lady became crazy after the petitioner's refusal and tried to force herself on the petitioner and the petitioner tried to defend herself. The petitioner states that the police were called and the lady accused the petitioner of trying to kill her. The petitioner contends that this was untrue and that is why the court dismissed the charges against her. As discussed in the AAO's previous decision, the regulation at 8 C.F.R. § 204.2(c)(1)(vii) provides, in pertinent part:

A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character . . . although the acts do not require an automatic finding of lack of good moral character.

The petitioner's offense was an unlawful act that adversely reflects upon her moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Although the state did not prosecute the act and the petitioner's arrest was expunged from the record, the petitioner has not provided a credible explanation of the extenuating circumstances for the aggravated assault with weapon. The AAO observes that the applicant married her spouse in August 2003 and does not indicate when she separated from her husband. The lease she submitted for the claimed marital address is for a term beginning September 27, 2003 and ending October 2004. The petitioner does not provide evidence establishing that she moved into the room of the person that was attacked and for which the petitioner was arrested. The record on motion, including the petitioner's brief statement, does not provide the necessary clarification or explanation of the extenuating circumstances of her arrest. Rather, her statement further confuses the circumstances of her claimed residence and marriage to her former spouse. The AAO has also reviewed the letters submitted on the petitioner's behalf attesting to the petitioner's good moral character. The letters are insufficient in that they do not acknowledge the petitioner's past arrest or provide any details that offer an understanding of the event and the petitioner's part in the arrest.

The petitioner has not offered new evidence on motion sufficient to reopen the matter as it regards her failure to establish good moral character.

The petitioner has also failed to offer new evidence on motion that demonstrates her intent in entering the marriage. The applicant's testimonial evidence that she did not marry her former spouse to obtain immigration benefits is not substantiated with probative detail describing how she met her former spouse, what they did together prior to the marriage, how long they dated, or any information that would lend itself to supporting the petitioner's good faith intent when entering into the marriage. Similarly, the statements submitted on behalf of the petitioner, do not demonstrate the petitioner's intent when entering into the marriage. The AAO has also reviewed the photocopies of the check card issued to the petitioner's former husband but does not find a check card sufficient to establish that the couple commingled funds and intended to start a life together. The AAO also questions the continued validity of a check card after the couple divorced. Upon review of the evidence submitted on motion, the petitioner has not established that she entered into the marriage in good faith.

As previously stated, a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. Generally, the new facts must be material and unavailable previously, and could not have been discovered earlier in the proceeding. Here, no evidence in the motion contains new facts pertinent and probative on the

issues of the petitioner's good moral character and her intent upon entering the marriage. Accordingly, the motion to reopen will be dismissed.

Of note, 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. With the current motion, the movant has not met that burden.

The AAO also finds that the petitioner has not provided evidence that satisfies the requirements of a motion to reconsider. The record on motion does not include any pertinent precedent decisions that would establish that the AAO or the director misinterpreted the evidence of record.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed. The previous decision of the AAO, dated July 6, 2009, is affirmed. The petition is denied.