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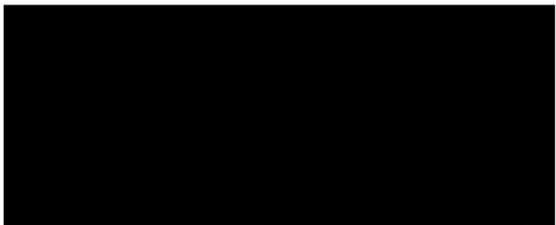
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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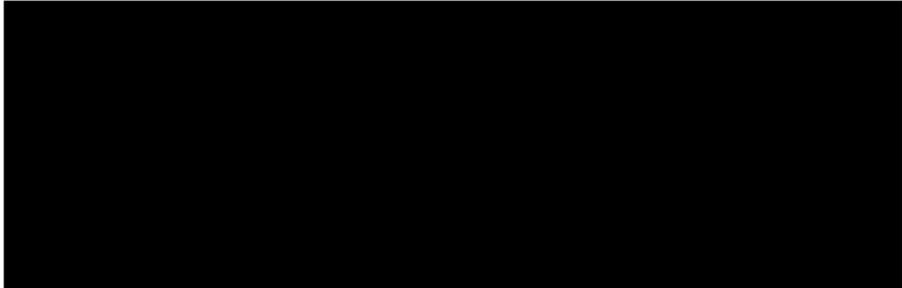


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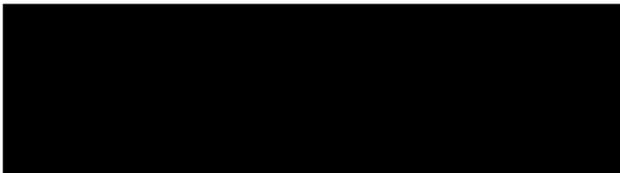
Date: APR 27 2010

IN RE: Petitioner:



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:



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) summarily 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 March 27, 2008, the director denied the petition, determining that the petitioner had failed to establish: (1) that she is not subject to the provisions of section 204(c) of the Act, 8 U.S.C. § 1154(c); (2) that she is not subject to the provisions of section 204(g) of the Act, 8 U.S.C. § 1154(g); (3) that she shared a joint residence with her husband; (4) that she was subjected to battery or extreme cruelty by her husband; and (5) that she is a person of good moral character. On appeal, counsel submitted a brief, in essence, requesting a re-adjudication of the evidence of the record. The AAO determined that a reconsideration of the evidence previously submitted is inconsistent with 8 C.F.R. § 103.3(a)(1)(v). More specifically, the AAO found that neither counsel nor the petitioner had addressed the director’s determination that the petitioner had not established that she is a person of good moral character.

On motion, counsel for the petitioner asserts that the director made numerous errors of fact and law and that these errors were carefully set forth in the appeal. Counsel contends that it was plain error for the AAO to conclude that counsel had not identified any erroneous conclusion of law or statement of fact.

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).

The director, on March 27, 2008 set forth articulately and cogently five grounds for denying the petitioner’s Form I-360 petition. Counsel failed to address all grounds of the denial in his appeal. The AAO specifically noted that neither counsel nor the petitioner had addressed the director’s determination that the petitioner had failed to establish good moral character.

The record on motion, again fails to address this crucial element in establishing eligibility for this benefit. The petitioner has not offered new evidence on motion sufficient to reopen the matter as it regards her failure to establish good moral character.

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 failure of the petitioner to establish that she is a person of good moral character. 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 April 27, 2009, is affirmed. The petition is denied.