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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

B9.

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **AUG 11 2010**

IN RE:

[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:

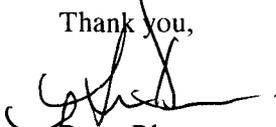
[REDACTED]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
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 dismissed. 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 March 16, 2009, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his spouse. The AAO concurred with the director's decision. On motion, counsel for the petitioner asserts that the petitioner's spouse's extramarital affair, pregnancy by another man, and marriage to the other man, in the Lebanese community is not simply humiliating but are actions that cripple the petitioner's ability to function normally. Counsel asserts that the petitioner has sufficiently linked his peptic ulcer disease, post traumatic stress disorder, and depression as diagnosed by three medical personnel, to the actions taken by his United States spouse.

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 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 AAO previously determined that the petitioner's spouse's extramarital affair, pregnancy, and

marriage to another man, are not actions that constitute battery or extreme cruelty as set out in the statute and regulation. Neither counsel nor the petitioner has provided further evidence to establish that this determination is contrary to the law or based on a misinterpretation of the evidence of the record. The petitioner has failed 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 motion is dismissed. The decision of the AAO is affirmed. The petition is denied.