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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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FEB 03 2010

FILE: [REDACTED]
EAC 07 023 51369

Office: VERMONT SERVICE CENTER

Date:

IN RE: [REDACTED]

PETITION: 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 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on appeal. The appeal will be rejected

The petitioner seeks immigrant classification under 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.

The director denied the petition on June 13, 2007, on the basis of his determination that the petitioner had failed to establish: (1) that she shared a joint residence with her husband; (2) that she was subjected to battery or extreme cruelty by her husband; and (3) that she married her husband in good faith. The petitioner filed a timely appeal, which the AAO dismissed on April 2, 2009. In its decision, the AAO affirmed each of the director's findings.

Counsel filed the instant matter on April 30, 2009, and marked the box at Part 2 of the Form I-290B to indicate that she was filing an appeal. Counsel's April 29, 2009 letter that was attached to the Form I-290B also indicated that she was filing an appeal. The AAO notes, however, that the regulations contain no provision for the appeal of an AAO decision.

As stated on the cover page to the AAO's April 2, 2009 decision, if the petitioner believed that the law was improperly applied or if she had additional information for the AAO to consider, the regulations at 8 C.F.R. § 103.5(a) provide for the submission of a motion to reopen or reconsider. As counsel has filled an appeal rather than a motion to reopen or reconsider, the appeal will be rejected.¹

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is rejected. The previous decisions of the director and the AAO are affirmed.

¹Although counsel indicated on the Form I-290B that a brief and/or additional evidence would be submitted to the AAO within thirty days, the AAO has never received any supplemental materials. The AAO notes that, even if counsel had indicated that she was filing a motion rather than an appeal, the regulations at 8 C.F.R. § 103.5(a) contain no provision for the submission of supplemental materials once a motion has been filed. Therefore, the motion would have been dismissed pursuant to 8 C.F.R. § 103.5(a)(4) for failure to meet applicable requirements.