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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

PUBLIC COPY

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FILE:

EAC 05 009 52827

Office: VERMONT SERVICE CENTER

Date: FEB 16 2010

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)

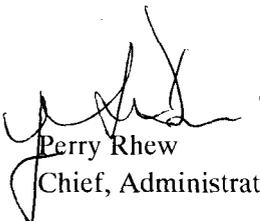
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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. The matter is not before the Administrative Appeals Office (AAO) on a motion to reopen the matter. 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 November 1, 2005. Upon review of a subsequently filed appeal, the AAO remanded the matter to the Vermont Service Center for the issuance of a Notice of Intent to Deny (NOID) the petition. On September 17, 2007 the director issued a NOID informing the petitioner that she had not submitted sufficient evidence establishing her good faith entry into her marriage and the requisite battery or extreme cruelty. The director requested that the petitioner provide a response and further evidence within 30 days to overcome the deficiencies detailed in the NOID. On January 9, 2008, after receiving no response from the petitioner, the director denied the petition for the reasons cited in the NOID and certified the decision to the AAO. The director's Notice of Certification informed the petitioner that she had 30 days to submit a brief to the AAO. The AAO received nothing further from the petitioner. On January 26, 2009, after receiving no further information, the AAO affirmed the director's January 9, 2008 decision that the petitioner had not demonstrated that she entered into marriage with her U.S. citizen spouse in good faith and that he had subjected her to battery or extreme cruelty.

On February 27, 2009, the AAO received the petitioner's Form I-290B, Notice of Appeal or Motion. On motion, the petitioner submits copies of previously submitted and previously available documents.

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 has reviewed the documents submitted and does not find any new document. The AAO also observes that many of the documents submitted on motion are already in the record and the deficiencies of the documents have been addressed. The documents submitted on motion provide no further details regarding the petitioner's courtship, wedding, and life with her former husband and no probative information regarding the claimed abuse. 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 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 dismissed, 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, and the petition is denied.