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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 24 2010

FILE:

EAC 07 005 50916

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

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 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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a United States lawful permanent resident.

The director denied the petition on December 14, 2007, determining that the petitioner had failed to establish that she married a lawful permanent resident of the United States and thus is eligible for preference immigrant classification based on such a relationship and that she had failed to establish that she had resided with the lawful permanent resident. The AAO withdrew the director's decision on the issues of the petitioner's failure to establish a marriage to a lawful permanent resident and failure to establish that she is eligible for immigrant classification based on the marriage. The AAO concurred with the director's decision regarding the petitioner's failure to establish that she had resided with the lawful permanent resident. The AAO found beyond the decision of the director that the petitioner had failed to provide sufficient detailed evidence that she had been subjected to battery or extreme cruelty by the lawful permanent resident and that she had failed to provide probative evidence establishing her good faith entry into the marriage.

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.

On motion, counsel for the petitioner asserts that United States Citizenship and Immigration Services (USCIS) erred in denying the Form I-360 as the petitioner and the lawful permanent resident in this matter have three children together and the petitioner provided evidence of protective orders filed in court and evidence of psychological and educational assistance provided to the petitioner. Counsel asserts that the petitioner has suffered tremendously from the actions of the father of her three children and to have her petition denied aggravates the matter.

Counsel's assertions are insufficient to require a reopening of this matter. Counsel does not provide any new facts supported by affidavits or other documentary evidence. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*,

17 I&N Dec. 503 (BIA 1980). The AAO's review of the record in the previous proceeding included a review of the information regarding the petitioner's three children and the information submitted from a court and Proyecto Matria, as well as the Center for Dominican Women. The AAO detailed the deficiencies of the information submitted and articulated its reasoning in the previous decision. The record on motion does not include any further information or evidence that overcomes the AAO's prior decision. The petitioner has not submitted any new relevant and probative facts. 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 counsel submitted any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or USCIS policy based on the evidence of record at the time of the initial decision. Counsel 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. The petition is denied.