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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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FILE:

[REDACTED]  
EAC 05 113 52149

Office: VERMONT SERVICE CENTER

Date: **FEB 24 2010**

IN RE: Petitioner: [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)

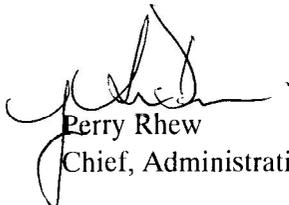
ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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)(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 August 13, 2007. The director determined that the petitioner had failed to establish: (1) that she has a qualifying relationship with a United States citizen or lawful permanent resident; (2) that she is eligible for immigrant classification as an immediate relative; (3) that she shared a joint residence with her husband; (4) that her husband subjected her to battery or extreme cruelty; and (5) that she married her husband in good faith.

The AAO concurred with the director's decision setting out the deficiencies and inconsistencies in the record regarding each of the above issues.

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." 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 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 submits: (1) the petitioner's June 11, 2009 affidavit claiming certain information in the file regarding her residence with her husband was incorrect, that she did not have access to bills and bank statements until her husband left in September 2004, that she did not provide information about the verbal or psychological abuse and the ironing board incident in her first affidavit because she felt the information she submitted was enough and she was shaken up by her whole experience, and that she typed an incorrect name for her husband in her affidavit because she made a mistake, not because she did not know her husband's name; (2) copies of previously submitted form leases; (3) a June 11, 2009 affidavit signed by [REDACTED] wherein [REDACTED] presented testimony regarding the petitioner's residence with her husband and provided the first page of a form lease; (4) several utility bills and receipts dated in 2003 and 2004; (5) information regarding the petitioner's husband's arrest and sentencing record beginning with arrests in 1994 and ending with an arrest in August 2005; (6) local police clearances for the petitioner from Houston and Dallas, Texas; and (7) photocopies of four undated pictures of an unidentified person with what appears to be a bruise on an arm and an unidentified injury in an unidentifiable area.

Counsel asserts: “in light of all the evidence submitted, the circumstances of the case, and the petitioner’s mental state, we feel that Petitioner has met her burden” in establishing eligibility for this benefit.

Counsel’s assertions and the evidence submitted are insufficient to require a reopening of this matter. The petitioner does not provide any new facts supported by affidavits or other relevant documentary evidence. The petitioner, in her June 11, 2009 affidavit offers general explanations regarding the inconsistencies pointed out by the AAO in its previous decision. The petitioner does not offer any substantiating information to assist in verifying her interpretation of events on motion. The petitioner’s acknowledgment of mistakes in the record is insufficient to now ascertain the truth of the matter and to resolve the inconsistencies in the record. The petitioner’s affidavit does not present new facts. Similarly, the June 11, 2009 affidavit of [REDACTED] does not contain new facts and provides yet another explanation of the petitioner’s residences allegedly with her husband. The AAO has reviewed the form leases previously submitted. The utility bills and receipts, some of which were previously submitted, are not new documents and the petitioner has not explained why such information was not submitted in response to the director’s request for further evidence (RFE), the director’s Notice of Intent to Deny (NOID) the petition, or on appeal. Likewise, the petitioner’s husband’s arrest and sentencing record is not new evidence and is unrelated to any claimed abuse perpetrated by him upon the petitioner. The photocopies of the four pictures do not show the face or any distinguishing marks of the individual in the picture; the pictures are undated, and there is no independent information in the record connecting these pictures to the claimed abuse. The petitioner does not indicate that the pictures are “new” pictures and does not explain why the pictures were not submitted earlier. The AAO does not find the pictures probative or sufficient to reopen this matter. Although the local police clearances may be “new” documents they are insufficient to reopen the matter as the police clearances were previously requested and not provided and no explanation has been provided regarding the failure to previously submit these necessary documents.

The AAO detailed the deficiencies of the information submitted on appeal as well as the information before the director and articulated its reasoning in the previous decision regarding the petitioner’s ineligibility for this benefit. 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. Moreover, neither the petitioner nor counsel has addressed all stated grounds for denial; the evidence presented on motion relates to the issues of abuse, good moral character and joint residence only. No evidence in the motion relates to the other two stated grounds for denial – entry into the marriage in good faith and the petitioner’s qualifying relationship with a U.S. citizen spouse. 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 previous decision of the AAO, dated May 15, 2009, is affirmed. The petition is denied.