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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
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
EAC 03 213 53923

Date: FEB 25 2010

IN RE: Petitioner: [REDACTED]

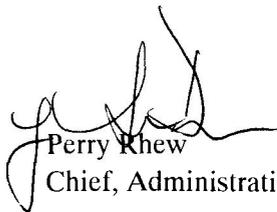
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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 Khew
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 December 15, 2008. The director determined that the petitioner did not establish that her spouse subjected her to battery or extreme cruelty and that she was a person of good moral character. The director also determined that the petitioner failed to overcome the bar to approval of the petition under section 204(c) of the Act, 8 U.S.C. § 1154(c), due to the petitioner's attempt to enter into a prior marriage for the purpose of evading the immigration laws.

The AAO concurred with the director's decision regarding the petitioner's failure to establish that her spouse had subjected her to battery or extreme cruelty and that she was a person of good moral character. The AAO also, upon independent review of the evidence, found that the petitioner had failed to overcome the bar to approval of the petition under section 204(c) of the Act, 8 U.S.C. § 1154(c), due to her attempt to enter into a prior marriage for the purpose of evading the immigration laws.

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, the petitioner submits a one-page statement asserting that her marriage to her first husband was not a fraud, that she had provided information in regard the abuse but did not have records of reports because her United States citizen spouse had threatened her, and that she had provided a police clearance from New Jersey where she had resided for more than six months. The petitioner acknowledges that she did not provide a local police clearance from Houston, Texas. The petitioner submits a photocopy of two undated pictures of an unidentified person with what appears to be scratches on the neck.

The petitioner's assertions 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 record does not include a local police clearance from Houston, Texas where the petitioner resided for more than six months during the 3-year period immediately preceding the filing of the petition.

8 C.F.R. § 204.2(c)(2)(v). The photocopies of the two pictures do not show the face or any distinguishing marks of the individual in the picture; the pictures are undated, and there is no information in the record regarding the time and circumstances of what appears to be scratches on the neck of the individual in the picture. 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. 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. 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 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. The petition is denied.