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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] Office: VERMONT SERVICE CENTER Date:

JUL 08 2010

IN RE: [REDACTED]

PETITION: Petition for Special 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:

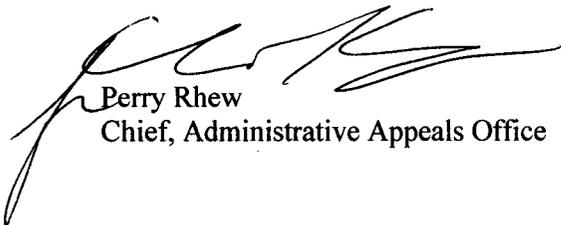
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


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 motion. The motion will be dismissed.

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 petitioner filed the instant Form I-360 on August 7, 2006. The director denied the petition on May 23, 2008 on the basis of his determination that the petitioner had failed to establish that he resided with S-N-,¹ his United States citizen wife; that S-N- subjected him to battery or extreme cruelty; or that he married S-N- in good faith. The AAO dismissed the petitioner's appeal on May 15, 2009.

The petitioner filed the instant matter on June 12, 2009, and marked the box at Part 2 of the Form I-290B, Notice of Appeal or Motion, to indicate he was filing an appeal. However, as the regulations contain no provision for the appeal of an AAO decision, the AAO will adjudicate the petitioner's submission as a motion to reopen or reconsider.

I. Motion to reopen

The petitioner's submission does not qualify as a motion to reopen. The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, the following:

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 upon the plain meaning of the word "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.² The petitioner's submission, however, contains no evidence that may be considered "new."

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. With this submission, the petitioner has not met that burden. Accordingly, it does not qualify as a motion to reopen.

II. Motion to reconsider

¹ Name withheld to protect individual's identity.

² The word "new" is defined as "1. Having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" *Webster's II New College Dictionary* 736 (Houghton Mifflin 2001)(emphasis in original).

The petitioner's submission qualifies as a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, the following:

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.

As the petitioner's submission satisfies these requirements, the AAO will reconsider its May 15, 2009 decision. On motion, the petitioner submits a June 12, 2009 statement and a copy of a student identification card from Fordham University issued in 2003. In his statement, the petitioner contends that he resided with S-N-; that S-N- subjected him to abuse; that he is a person of good moral character; and that he married S-N- in good faith. The petitioner claims that, in his opinion, the AAO denied the petition on the basis of concerns articulated by an immigration officer at his permanent residency interview. According to the petitioner, that officer was hostile and inhuman.

The generalized assertions of the petitioner on motion are insufficient to overcome the grounds for the AAO's affirmation of the director's denial of the petition. The petitioner's statements introduce no meaningful details or further, probative information. Nor does the student identification card address any of the grounds for denial. Moreover, a motion to reconsider must establish that the decision was based on an incorrect application of law or USCIS policy based on the evidence of record at the time the decision was rendered. 8 C.F.R. § 103.5(a)(3). Here, the petitioner has demonstrated no misapplication of law or policy in the AAO's May 15, 2009 decision. Nor has the petitioner demonstrated that the record of proceeding before the AAO at the time it issued that decision warranted approval of the petition. The petitioner's motion to reconsider that decision, therefore, will be dismissed.

III. Conclusion

The petitioner's submission does not satisfy the requirements of a motion to reopen. Although the petitioner's submission qualifies as a motion to reconsider, he has failed to meet his burden of proof. The petitioner has demonstrated no misapplication of law or policy in the AAO's May 15, 2009 decision and his motion to reconsider that decision will consequently be dismissed pursuant to the regulation at 8 C.F.R. §§ 103.5(a)(3)-(4). The petitioner has failed to establish that he resided with S-N-; that S-N- subjected him to battery or extreme cruelty; or that he married S-N- in good faith, and the AAO affirms its prior decision.

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 motion to reopen or reconsider is dismissed. The AAO's May 15, 2009 decision is affirmed. The petition remains denied.