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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:

Office: VERMONT SERVICE CENTER

Date: JUL 14 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:

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 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 or 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 July 21, 2008, determining that the petitioner had not established that she had entered into the marriage with her spouse in good faith. The AAO concurred with the director's decision.

On motion, the petitioner submits a number of documents and photographs, as well as her statement that the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, included the incorrect date she ended her residence with her former husband. The petitioner also states that all mail for her and her husband was delivered to a post office box, even though he bought a new home after the couple married. The petitioner noted that only business mail was delivered to the home address. The documents in the record include receipts, statements, and other bills addressed to the petitioner at the post office box address. The record, on motion, also includes January, March, and April 2004 bank statements addressed to the petitioner's former husband at the post office box address and a United States Citizenship and Immigration Services (USCIS) receipt addressed to the petitioner in care of her former husband at the post office box address. The record also includes photocopies of electronic mail between the petitioner and her former husband as well as photographs of the couple at their wedding and on other occasions.

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 documents submitted by the petitioner are not new documents. First, many of the documents and photographs were previously submitted and have been examined and considered by both the director and the AAO. Other documents submitted showing the petitioner's address as a post office box and three bank statements addressed to the petitioner's former husband at the post office box address and a USCIS receipt addressed to the petitioner in care of her former husband at

the post office box address, do not assist in establishing that the petitioner married her former husband in good faith. In addition, the petitioner's statement that only business mail was sent to the home address is inconsistent with other letters in the record, specifically a utility statement that was addressed to the petitioner at the claimed home address. Further, the petitioner provides no explanation for submitting the photocopies of the electronic mail on motion and not for the director's review or on appeal. The AAO does not find any information submitted on motion that provides further "new" probative facts that demonstrate the petitioner's good faith in entering into the marriage.

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 decision of the AAO is affirmed. The petition is denied.