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U.S. Citizenship and Immigration Services  
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Date: MAR 06 2010

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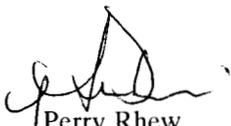
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
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 previous decisions of the director and the AAO will be affirmed.

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 the basis of his determination that the petitioner had failed to establish that she entered into the marriage in good faith. Counsel filed a timely appeal, which the AAO dismissed on May 26, 2009. In its decision, the AAO affirmed the director's findings. The AAO also found, beyond the director's decision, that the petitioner had also failed to establish that she was subjected to battery or extreme cruelty. Counsel filed the instant matter on June 26, 2009, and marked the box at Part 2 of the Form I-290B to indicate that he was filing both a motion to reopen and a motion to reconsider.

*I. Motion to reopen*

Counsel's submission does not meet the requirements of 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.<sup>1</sup> As counsel submits no evidence into the record in support of his motion,<sup>2</sup> his submission contains no evidence that could be considered *new* under 8 C.F.R. § 103.5(a)(2).

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 motion, the petitioner has not met that burden. Accordingly, counsel's submission does not qualify as a motion to reopen, and the proceedings will not be reopened.

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<sup>1</sup> 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).

<sup>2</sup> Counsel's July 20, 2009 appellate brief does not constitute 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).

*II. 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.

Counsel argues in his July 20, 2009 appellate brief that the evidence of record before the AAO at the time it issued its decision was sufficient to warrant approval of the petition. However, counsel's assertions are insufficient to reverse the AAO's decision.

Although the petitioner stated in her August 3, 2007 self-affidavit that her husband tried to hit her, counsel states that she meant that he actually hit her. Counsel, however, provides no evidence for his assertion. As was noted at footnote 2, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *Phinpathya* at 188-89.

In similar fashion, counsel repeats the petitioner's claim to have been sexually abused by her husband. He also states that the petitioner's husband stole money from her. Counsel's assertions, however, are simple of reiterations of the petitioner's claims, and he makes no attempt to resolve the issues raised by the AAO in its May 26, 2009 decision.

In response to the AAO's observation that the petitioner misspelled her husband's name in her affidavits, counsel argues that the petitioner "is neither a professional typist nor proofreader." The AAO, however, finds this explanation deficient.

Finally, counsel addresses the AAO's observation that the couple's 2006 income tax was amended. Counsel states that many married couples amend their tax returns, and that filing amendments to tax returns do not undermine the legitimacy of their marriages. The AAO, however, made no such statement. The AAO stated that, in this particular case, due to the particular manner in which this tax return was amended, it did not assist the petitioner in demonstrating her good faith entry into the marriage, and counsel does not address that finding on motion. The AAO did not state that filing amendments to tax returns undermines the legitimacy of marriages.

As stated previously, 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). Counsel has demonstrated no misapplication of law or policy in the AAO's May 26, 2009 decision. Nor has counsel demonstrated that the record of proceeding before the AAO at the time it issued that decision warranted approval of the petition. Counsel's motion to reconsider that decision, therefore, will be dismissed.

*III. Conclusion*

Counsel's submission fails to qualify as a motion to reopen or reconsider. The petitioner has failed to establish that she married her husband in good faith or that she was subjected to battery or extreme cruelty, and the AAO affirms its previous 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 is dismissed. The AAO's May 26, 2009 decision is affirmed.