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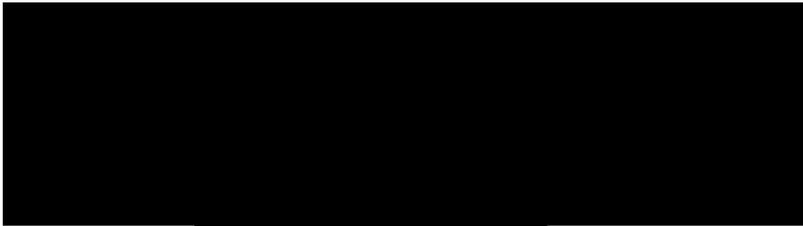
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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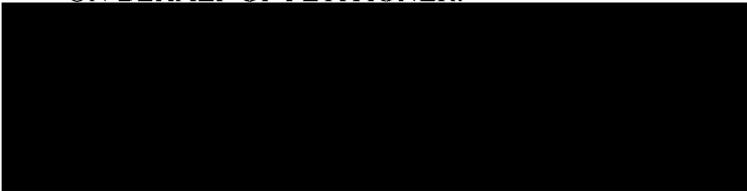
Date: MAR 06 2010

IN RE:



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: (1) that his wife subjected him to battery or extreme cruelty; and (2) that he is a person of good moral character. Counsel filed a timely appeal, which the AAO dismissed on May 15, 2009. In its decision, the AAO affirmed each of the director's findings.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider. 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three days are added to the proscribed period. 8 C.F.R. § 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion does not meet applicable requirements. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. See 8 C.F.R. §§ 103.5(a)(2) and (3). Here, counsel submitted the motion on June 12, 2009, but requested an additional 30 days to submit evidence, which the AAO received on July 15, 2009. As, at the time of filing the motion, counsel failed to submit any evidence that would satisfy the requirements of a motion to reopen or reconsider, the motion must be dismissed for failing to meet applicable requirements.¹

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 previous decisions of the director and the AAO are affirmed.

¹The AAO notes that counsel's July 15, 2009 submission contains no evidence that could be considered *new* under 8 C.F.R. § 103.5(a)(2). The evidence submitted after the filing of the motion is not accompanied by any explanation regarding why such evidence was unavailable or could not have been discovered or presented prior to the AAO's issuance of its May 15, 2009 decision. Similarly, counsel's submission does not qualify as a motion to reconsider. For a submission to qualify as a motion to reconsider, it must, at the time it is filed, establish that the decision it seeks to have reconsidered was incorrect based upon the evidence of record at the time it was issued. 8 C.F.R. § 103.5(a)(3). Nothing in counsel's submission establishes that the AAO misapplied the law or that the decision was incorrect based upon the evidence in the record at the time.