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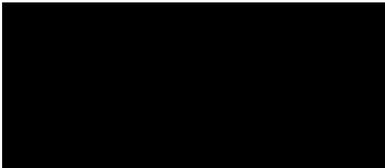
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

B9



FILE:



Office: VERMONT SERVICE CENTER

Date:

NOV 09 2010

IN RE: Petitioner:



PETITION:

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

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 and 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 previous decision. The motion will be dismissed. The previous AAO decision to deny the petition will be affirmed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a United States lawful permanent resident.

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 prior record included the following pertinent facts. The petitioner is a native and citizen of India who entered the United States in June 2000. She married the claimed abuser on November 17, 1997 in India. On January 7, 2008, a divorce was granted dissolving the marriage. On that same date, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The record further included evidence that the petitioner’s former husband’s was issued a receipt for an approved Form I-140, Immigrant Petition for Alien Worker, with a priority date of August 1, 2005. A review of United States Citizenship and Immigration Services’ (USCIS) records showed that the petitioner’s former husband adjusted his status to that of a lawful permanent resident in December 2009, after the petitioner and her husband’s divorce was finalized.

The AAO determined that as the petitioner’s former husband was not a lawful permanent resident during the petitioner’s marriage to him, the petitioner was not ever married to a United States lawful permanent resident; thus, she is ineligible to seek relief under section 204(a)(1)(B)(ii) of the Act.

On motion, counsel for the petitioner asserts that the petition should be approved either because: (1) the petitioner believed that she was married to a lawful permanent resident, or (2) the petitioner was in fact a bona fide spouse of a lawful permanent resident within the past two years who demonstrated a clear connection between the termination of the marriage within the past two years and the battering or extreme cruelty by the lawful permanent resident spouse.

The record on motion does not provide any new facts supported by affidavits or other relevant documentary evidence sufficient to reopen the matter. The AAO reviewed the facts of the record and

determined that the petitioner was not married to a lawful permanent resident as the termination of the marriage occurred prior to her husband becoming a lawful permanent resident. Counsel's assertions on motion do not provide new facts supported by affidavits or other documentary evidence for review. Counsel's principle issue with the prior decision is that he disagrees with the denial of the decision. Disagreement without new facts or evidence is insufficient to support the reopening of the matter. The record on motion does not include any further information or evidence that overcomes the AAO's prior decision.

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. Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) and section 204(a)(1)(A)(iii)(II)(CC)(ccc) of the Act are not applicable to the matter at hand. Section 204(a)(1)(A)(iii)(II)(CC) of the Act is applicable to spouses of United States citizens. Section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act sets out the first criterion for the spouse of a lawful permanent resident to qualify for this benefit. The criterion requires that the petitioner "was a bona fide spouse of a lawful permanent resident within the past two years." In this matter, the petitioner was never the bona fide spouse of a lawful permanent resident, as her former husband did not have lawful permanent resident status prior to their divorce. Similarly, counsel's assertion regarding the petitioner's belief that her former husband was a lawful permanent resident during their marriage is not supported by any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or USCIS policy. Section 204(a)(1)(B)(ii)(II)(aa)(BB) applies to those individuals who believed that their marriage was a legitimate marriage even though the lawful permanent resident spouse was not eligible to enter into marriage. This section does not extend to all those individuals who thought that the individual they were marrying had lawful permanent resident status in the United States.

Counsel fails to establish that his interpretation of the law is based on pertinent precedent decisions. Counsel fails to establish that the director or the AAO misinterpreted the evidence of record or the law. 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 previous decision of the AAO, dated May 25, 2010, is affirmed. The petition is denied.