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



U.S. Citizenship and Immigration Services

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FILE:



Office: VERMONT SERVICE CENTER Date:

NOV 16 2010

IN RE:

Petitioner:



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:

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) remanded the matter to the director for entry of a new decision. The director denied the petition and certified his decision to the AAO for review and the AAO affirmed the denial. Counsel filed an appeal which was rejected. The matter is now before the AAO on a motion to reopen and reconsider the rejected appeal. The motion will be dismissed. The previous decisions will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification pursuant to 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 director denied the petition on July 13, 2005, determining that the petitioner had failed to establish that he had been battered or subjected to extreme cruelty by his U.S. citizen spouse. The petitioner timely submitted a Form I-290B, Notice of Appeal, and the AAO, although agreeing with the director's analysis, remanded the matter, on technical grounds, for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect. The director issued the NOID on November 16, 2006 and upon review of the response to the NOID, denied the petition again, determining that the petitioner had failed to establish that he had been subjected to battery or extreme cruelty by his U.S. citizen spouse. The AAO affirmed the director's decision on March 23, 2009. On April 21, 2009, counsel for the petitioner submitted an appeal of the AAO's decision. On July 15, 2010, the AAO rejected the appeal as the regulations do not include a provision for the appeal of an AAO decision.

On motion to reopen and reconsider, counsel for the petitioner asserts that the AAO should have known that the Form I-290B was improperly marked due to an administrative error and should have adjudicated the appeal as a motion to reopen and reconsider. Counsel asserts that the AAO has failed to assess all the evidence of record and failed to give the proper weight to other evidence in the record.

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.

Counsel does not provide any new evidence or pertinent precedent decisions that establish the AAO's rejection of the improperly filed appeal was in error. Moreover, the AAO observes that counsel submitted a Form I-290B timely on April 21, 2009, but did not include a brief or additional

evidence. 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).

In addition, neither the late submitted brief nor the previously submitted declarations provided new facts supported by affidavits or other relevant documentary evidence sufficient to reopen the matter. Both the director and the AAO detailed the deficiencies of the information submitted on appeal as well as the information before the director and articulated their reasoning in the previous decisions regarding the petitioner's ineligibility for this benefit. Counsel does not provide any new information in the brief submitted on the instant motion. Counsel's principle issue with the prior decisions is that he disagrees with the denial of the petition. Disagreement without new facts or evidence is insufficient to support the reopening of the matter. Neither counsel nor the petitioner has submitted any new relevant and probative facts. The record on motion does not include any further information or evidence that overcomes the AAO's prior decisions. In this matter, the petitioner has not provided evidence sufficient to reopen the prior proceeding.

Neither has counsel submitted any pertinent precedent decisions to establish that the previous AAO decisions were based on an incorrect application of law or United States Citizenship and Immigration Services (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 motion is dismissed. The AAO's March 23, 2009 and July 15, 2010 decisions are affirmed. The petition remains denied.