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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

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

NOV 18 2010

IN RE:

[Redacted]

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:

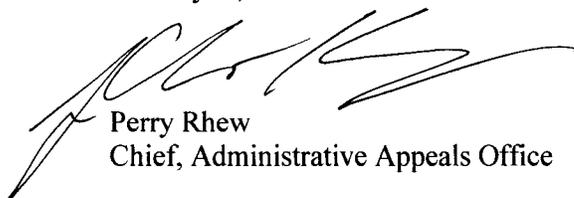
[Redacted]

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 service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed its decision on a subsequent motion to reopen and reconsider. The matter is again before the AAO on a second motion to reconsider. The motion will be dismissed. The previous decisions of the field office director and the AAO will be affirmed. The petition will remain denied.

The petitioner seeks immigrant classification under 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 petitioner filed the instant Form I-360 on August 3, 2006. The director issued a subsequent notice of intent to deny (NOID) the petition to which the petitioner, through counsel, submitted a timely response. The director denied the petition on June 20, 2007, on the basis of his determination that the petitioner had failed to establish: (1) that she was subjected to battery or extreme cruelty by her husband; and (2) that she married her husband in good faith. Counsel subsequently filed a timely appeal, which the AAO dismissed on March 17, 2009. We affirmed that decision, in response to a subsequent motion to reopen and reconsider, on July 15, 2010. Counsel filed the instant motion to reconsider on August 13, 2010, and submitted a brief reasserting the petitioner's eligibility for the requested classification as well as copies of previously-submitted and considered documentation.

The petitioner's submission does not qualify as a motion to reconsider. As counsel correctly notes, the regulation at 8 C.F.R. § 103.5(a)(3) 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 cites no pertinent precedent decisions to establish that our prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. Rather, in his brief, counsel discusses evidence already considered twice by the AAO.

The petitioner's submission does not qualify as a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." As such, the petitioner's motion will be dismissed, the proceedings will not be reconsidered, and the prior decisions of the director and the AAO will not be disturbed.

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 petition remains denied.