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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

Bq

FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 05 2010

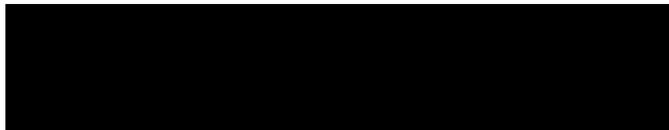
IN RE:

Petitioner:



PETITION: Petition for Immigrant Battered 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, with a fee of \$585. 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. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal and dismissed a motion to reopen and reconsider its previous decision. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be granted. The previous decisions to deny the petition 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 June 13, 2007. The director determined that the petitioner: had not established that he resided with the claimed abusive spouse; that he married the claimed abusive spouse in good faith; and that his United States citizen spouse had subjected him to battery or extreme cruelty.

On June 4, 2009, the AAO concurred with the director's decision on these three issues. On July 1, 2009, counsel for the petitioner filed a motion to reopen and reconsider the AAO's previous decision. Counsel submitted a compact disc, which he asserted contained a recording of the petitioner's wife verbally abusing the petitioner. Counsel did not submit a translated transcript of the recording and did not explain why the compact disc had not been submitted in the prior proceedings. Upon review of the motion, the AAO dismissed the motion determining: that counsel had not addressed the failure of the petitioner to establish that he had resided with the claimed abusive spouse; that counsel had not addressed the failure of the petitioner to demonstrate that he had entered into the marriage in good faith; and that counsel had not submitted "new" evidence and had not established that the AAO's prior decision was incorrect based upon the record before it at the time the decision was issued. The AAO's decision dismissing the motion to reopen and reconsider is dated February 3, 2010.

Counsel, in the instant motion to reopen, submits a certified transcription of the content of the audio compact disc and a certified English translation of the same, dated March 4, 2010. Counsel also submits a February 18, 2010 letter counsel wrote to a company requesting the cost of a transcription and translation of the compact disc. In addition, the record in this instant motion includes a print out of electronic mail correspondence dated February 23 and February 24, 2010 indicating that one individual had listened to the compact disc and declined to take the assignment on February 24, 2010. Counsel further submits the petitioner's March 4, 2010 affidavit, wherein the petitioner states that although the audio compact disc had previously been available he had tried several times to obtain a certified Albanian transcription and English translation but due to the poor quality of the disc no Albanian transcriber was willing to carry out the assignment until now.

The evidence submitted on second motion does not overcome the previous findings of the director or the AAO. We observe that the evidence submitted on motion to establish that the petitioner suffered battery or extreme cruelty shows only a mutually combative situation between two individuals and does not establish that the petitioner was subjected to battery or extreme cruelty as defined by the statute and regulation. The AAO observes that the discourse recorded and translated includes accusations and denials of both parties and thus is insufficient to establish that the petitioner's spouse was the perpetrator of battery or extreme cruelty against the petitioner. He, therefore, does not meet the eligibility criterion at section 204(a)(1)(A)(iii)(I)(bb) as an alien who has been subjected to battery or

extreme cruelty by his U.S. citizen spouse. Furthermore, although the director also denied the petition because the evidence failed to establish that the petitioner resided with his wife and married her in good faith, a decision with which the AAO concurred, neither the petitioner nor counsel has addressed these two issues on motion. Accordingly, there is no basis to overturn our previous determinations that the petitioner failed to establish that he entered his marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa), or that he resided with his spouse as required by section 204(a)(1)(A)(iii)(II)(dd).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met, and the previous decisions of the AAO will be affirmed.

ORDER: The June 4, 2009 and the February 3, 2010 decisions of the AAO are affirmed. The petition is denied.