

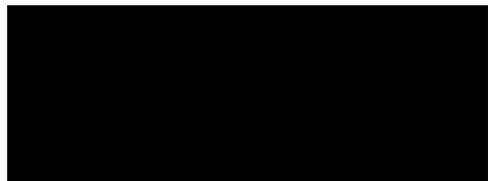
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



Bq

FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 14 2011

IN RE:

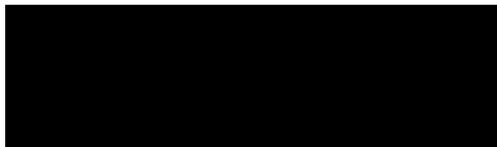
Petitioner:



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, with a fee of \$630. 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,

Terry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reconsider. The motion will be dismissed. The previous decision is affirmed and the petition remains 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 his United States citizen spouse.

On August 27, 2009, the director denied the petition, determining that the petitioner had failed to overcome the bar to approval of the petition under section 204(c) of the Act, 8 U.S.C. § 1154(c), due to entering into a prior marriage for the purpose of evading the immigration laws. The AAO dismissed the subsequently filed appeal, concurring with the director's decision and determining that the petitioner had also failed to establish that he had resided with the claimed abusive United States citizen spouse, had been subjected to battery or extreme cruelty by the claimed abusive United States citizen spouse, and had failed to establish that he had entered into the marriage in good faith.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before United States Citizenship and Immigration Services (USCIS). 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three-day period is added to the 30-day 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 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.

In this matter, counsel for the petitioner submitted a Form I-290B, Notice of Appeal or Motion, checking the box indicating that he was filing a motion to reconsider and that a brief and/or additional evidence was attached. The Form I-290B was not properly filed until October 13, 2010, 50 days subsequent to the AAO's August 24, 2010 decision. 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 and the previous decision of the AAO will be affirmed.

ORDER: The motion is dismissed. The AAO's August 24, 2010 decision is affirmed and the petition remains denied.