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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

**PUBLIC COPY**

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DATE:

JUL 11 2011

Office: VERMONT SERVICE CENTER

File:



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:

SELF-REPRESENTED

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and the Administrative Appeals Office (AAO) summarily dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed. The previous decisions will be affirmed. The petition will remain denied.

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.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The director denied the petition on July 2, 2010 and the AAO summarily dismissed a subsequently filed appeal on November 23, 2010. On December 27, 2010, the petitioner filed a Form I-290B, Notice of Appeal or Motion. She checked the box on the Form I-290B indicating that she was filing an appeal and that her supplemental brief or evidence would be submitted to the AAO within 30 days. The AAO observes, however, that if a petitioner seeks a new decision from the AAO after the dismissal of an appeal, a petitioner must file a motion, not another appeal. 8 C.F.R. § 103.5(a). Moreover, while 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). Further, we observe that the petitioner does not provide additional evidence or a late-submitted brief.

In a statement on the Form I-290B, the petitioner asserts that she is unable to locate her husband and that she thought she would be further notified regarding sending in additional documents.

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 petitioner has not provided any new facts on motion. As the petitioner has failed to state any new facts supported by affidavits or other documentary evidence, the record is insufficient to reopen the proceedings.

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 United States Citizenship and Immigration Services' (USCIS) policy based on the evidence of record at the time of the initial decision. The petitioner does not establish that the AAO's prior decision was an incorrect application of the law by pertinent precedent decisions. The information submitted on motion 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 and the previous decisions of the director and the AAO will be affirmed.

**ORDER:** The motion is dismissed. The July 2, 2010 of the director and the November 23, 2010 decision of the AAO are affirmed. The petition remains denied.