

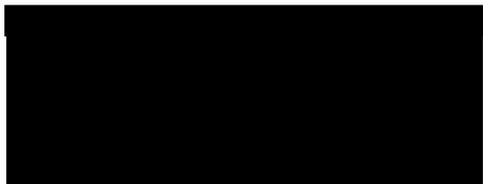
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



Bp

DATE: **JUL 12 2011**

Office: VERMONT SERVICE CENTER

File: A 89 533 016  
EAC 08 227 50097

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,

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 subsequent appeal. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion will be dismissed. The AAO's previous decision 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 March 25, 2010, determining that the petitioner had failed to establish that he was subjected to battery or extreme cruelty as defined in the statute and regulation and that he had failed to establish that he entered into the qualifying relationship in good faith. The petitioner timely appealed the decision to the AAO. The AAO summarily dismissed the appeal after determining that counsel had failed to identify any specific, erroneous conclusion of law or statement of fact in the director's decision. The AAO observed that counsel's argument on the Form I-290B, Notice of Appeal or Motion, was that the petitioner had met his burden of proof and that the denial violated the petitioner's right to due process of law in an unspecified manner.

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.

On this instant motion to reopen and reconsider, counsel for the petitioner asserts that the petitioner was subjected to extreme cruelty as his wife had an affair with another man, forced him out of the marital domicile, and verbally, psychologically, and emotionally abused him. Counsel resubmits the petitioner's initial statement in support of the petition and resubmits affidavits from friends already considered by the director. Counsel also asserts that the petitioner married his wife in a

large family wedding and that he married his wife in good faith. Counsel does not submit any new information on this issue on motion. Counsel contends that the AAO did not fully address the evidence of record and again avers that the denial violated the petitioner's right to due process of law. The director set out the deficiencies in the record regarding the petitioner's failure to establish that he had been subjected to battery or extreme cruelty as defined in the statute and regulation and regarding his failure to establish that he entered into the marriage in good faith. On appeal neither counsel nor the petitioner identified any specific, erroneous conclusion of law or statement of fact in the director's decision. Simply expressing disagreement with the director's decision is insufficient to establish a basis for an appeal. The record on motion does not include any further information or evidence that overcomes the AAO's prior decision. The petitioner has not submitted any new relevant and probative facts for consideration. The AAO observes that motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. In this matter, the petitioner has not provided relevant evidence sufficient to reopen the prior proceeding.

Similarly, counsel does not submit any pertinent precedent decisions to establish that the AAO's prior 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. Counsel does not support his assertion that the denial violated the petitioner's due process rights. A review of the record and the director's adverse decision indicates that the director properly applied the statute and regulations in this matter and the AAO properly summarily dismissed the appeal when no new evidence or relevant argument was submitted. Again, the petitioner's primary complaint is that the director denied the petition. As previously discussed, the petitioner has not met his burden of proof and the denial was the proper result under the statute and regulation. The petitioner's due process claim is without merit and the motion fails to satisfy the requirements of a motion to reconsider.

The director properly determined that the petitioner had not established that he had been subjected to battery or extreme cruelty and that he had not entered into the marriage in good faith. As no further evidence was submitted on appeal and no specific erroneous conclusion of law or statement of fact was identified on appeal, the AAO concurred in the director's decision and summarily dismissed the appeal. The record on motion continues to lack probative evidence establishing that the petitioner was subjected to battery or extreme cruelty by his United States citizen wife and that he entered into the marriage in good faith. The record on motion does not include evidence or pertinent precedent decisions establishing that either the director or the AAO misinterpreted the evidence of record. The evidence fails to satisfy the requirements of a motion to reopen or 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 decisions of the director and the AAO will be affirmed.

**ORDER:** The motion is dismissed. The director's March 25, 2010 decision and the AAO's November 18, 2010 decision are affirmed. The petition remains denied.