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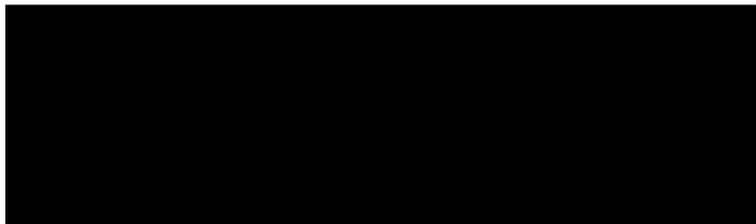
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



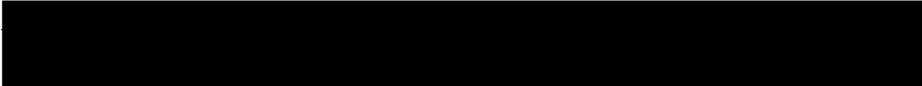
U.S. Citizenship
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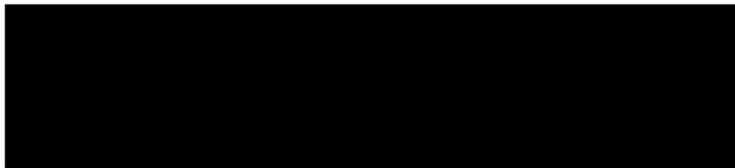


FILE:  Office: VERMONT SERVICE CENTER Date: **MAR 31 2011**

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:

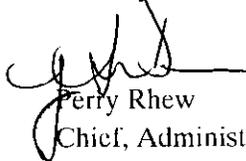


INSTRUCTIONS:

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked approval of 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 reopen and a motion to reconsider. The motion is dismissed. The approval of the petition remains revoked.

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 May 7, 2009, the director revoked approval of the petition, determining that the petitioner had not established: that he shared a joint residence with the United States citizen wife; that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse; or that he had entered into a qualifying relationship in good faith. The AAO dismissed the subsequently filed appeal, concurring with the director's decision.

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.

In this matter, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, checking the box indicating that he was filing a motion to reopen and a motion to reconsider and that a brief and/or additional evidence was attached. Attached to the Form I-290B is counsel's letter requesting a "review since we don't agree with the Director's decision as well as with the BIA decision." Counsel states that the petitioner swears that his marriage was entered into in good faith, that he lived with his abusive U.S. citizen wife, and that he was abused by his wife while married to her. Counsel indicates that he believes the petitioner's story. Counsel requests that the matter be reconsidered for humanitarian reasons. Counsel attaches an August 5, 2002 U.S. Citizenship and Immigration Services (USCIS) memorandum and the same documents submitted in support of the previously adjudicated appeal.

The petitioner has not provided any new facts. Other than counsel's assertion that he believes the petitioner's story, neither counsel nor the petitioner has submitted any new information or affidavits supporting any new facts. The record on motion is insufficient to reopen the prior proceeding.

Neither has counsel nor the petitioner submitted any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or USCIS policy based on the evidence of record at the time of the initial decision. Although counsel submits the August 5, 2002

memorandum, counsel does not assert nor does the AAO find that the director failed to follow USCIS policy. Moreover, the AAO upon review of the director's decision specifically addressed each issue and the evidence submitted and concurred with the director's reasoning. The petitioner's complaint, through counsel, is that he disagrees with the director's and the AAO's decisions. Neither the petitioner nor counsel, however, establishes that the decision was an incorrect application of the law by pertinent precedent decisions. The evidence 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 decision of the AAO will be affirmed.

ORDER: The motion is dismissed. The AAO's February 19, 2010, decision is affirmed and approval of the petition remains revoked.