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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



B9

DATE: **MAY 31 2011** Office: VERMONT SERVICE CENTER FILE:

IN RE:

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 service center director 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 reconsider. The motion will be dismissed.

The petitioner seeks immigrant classification under 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 a U.S. citizen. The director revoked approval of the petition because the petitioner did not establish that he married his wife in good faith, or that his wife subjected him to battery or extreme cruelty during their marriage. The AAO concurred with the director's decision, and dismissed the appeal on October 5, 2010. The petitioner, through counsel, filed a motion to reopen and reconsider the decision of the AAO. *See Form I-290B, Notice of Motion*, filed Nov. 4, 2010.

A motion to reopen a decision made by U.S. Citizenship and Immigration Services (USCIS) must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider a decision 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 USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider also must establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.*

In the motion to reopen and reconsider, the petitioner contends that USCIS erred in determining that the petitioner did not marry his wife in good faith. *See Statement in Support of Motion to Reopen and Reconsider*, dated Nov. 3, 2010. Specifically, the petitioner contends that pursuant to *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988), USCIS must find that he paid money to his spouse to perform the marriage in order to establish that he did not enter into the marriage in good faith. *See Statement in Support of Motion to Reopen and Reconsider*. The petitioner further claims that because there is no written or oral testimony regarding payment of money, USCIS must conclude that he entered the marriage in good faith. *Id.* The petitioner does not contest the USCIS determination that he failed to show the requisite battery or extreme cruelty during the marriage. No additional evidence was submitted in support of the motion.

The petitioner's contentions lack merit. To determine that a self-petitioner did not enter the abusive marriage in good faith, the statute does not require a finding of marriage fraud. *Matter of Kahy* is inapposite as it concerned a marriage fraud determination under section 204(c) of the Act based on the prior spouse's statement, that, among other things, she was paid to marry her husband, the beneficiary. 19 I&N Dec. at 805. *Matter of Kahy* did not address good-faith determinations under section 204(a) of the Act where the self-petitioner bears the burden of proof. Moreover, in *Matter of Kahy*, the Board did not hold that an exchange of money is required to find that an individual entered into a marriage to circumvent the immigration laws. Accordingly, the petitioner has not shown that USCIS incorrectly applied the law in revoking approval of the visa petition and dismissing the appeal because the petitioner did not establish that he married his wife in good faith.

The petitioner has submitted no new evidence, and has not demonstrated a misapplication of law or policy in the AAO's October 5, 2010 decision. Accordingly, the motion to reopen and reconsider will be dismissed. *See* 8 C.F.R. § 103.5(a)(4) (stating that a motion that fails to meet the applicable requirements shall be dismissed).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The motion is dismissed.