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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**

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DATE: **SEP 15 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:



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) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. 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.

The director denied the petition on September 16, 2010, determining that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by a United States citizen or that she had entered into the marriage in good faith. The AAO dismissed a timely filed appeal after considering the totality of the record.

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."

Counsel for the petitioner checks the box on the Form I-290B, Notice of Appeal or Motion, indicating that she is filing a motion to reopen the matter and submits a brief and a previously provided affidavit signed by the petitioner. Counsel does not submit any new evidence. The record is considered complete.

Upon review of counsel's brief, counsel asserts that United States Citizenship and Immigration Services (USCIS) is imposing an undue and higher burden on the petitioner. Counsel implies that USCIS has not considered the petitioner's cultural background, which counsel asserts explains the petitioner's failure to involve the police or state agencies in the marital disputes. Counsel's assertions are without merit. As articulated in the AAO's decision, the record lacks probative statements from the petitioner or others on her behalf that demonstrate that she was subjected to battery or extreme cruelty as that term is defined in the statute and regulation. The petitioner has also failed to provide descriptive and probative testimony regarding her intent when entering into the marriage. The AAO set out the deficiencies in the record in its April 12, 2011 decision. The petitioner does not supplement the record on motion with further testimony or evidence that overcomes the AAO's prior decision. Accordingly, as there are no new facts, the record is insufficient to support a motion to reopen the prior proceeding.

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 evidence will not be reconsidered, and the previous decision of the AAO will be affirmed.

ORDER: The motion is dismissed. The AAO's April 12, 2011 decision is affirmed. The petition remains denied.