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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) summarily dismissed a subsequent appeal. The matter is now before the AAO on 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 citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen 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 201(b)(2)(A)(i) 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 February 18, 2010, determining that the petitioner had not established: that she had a qualifying relationship with a United States citizen or lawful permanent resident; that she is eligible for immigrant classification pursuant to section 201(b)(2)(A)(i) of the Act; that she had been subjected to battery or extreme cruelty by her United States citizen spouse; and that she had entered into the marriage in good faith.

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.

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 reconsider and submits a brief. Counsel's brief is titled Motion to Reopen and to Reconsider. Counsel does not submit any new evidence. The record is considered complete.

Upon review of counsel's brief, counsel does not state any reasons for reconsideration supported by pertinent precedent decision establishing that the prior decisions incorrectly applied law or United States Citizenship and Immigration Services (USCIS) policy. Rather, counsel appears to assert that the petitioner's prior representative, an unlicensed agent, provided her ineffective assistance. Counsel also contends that USCIS should approve the petition on humanitarian grounds.

Although counsel states that the petitioner was not assisted by an attorney but by an agent, there is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed

attorney or unaccredited representative to undertake representations on her behalf. *See* 8 C.F.R. § 292.1. Counsel's contention that USCIS should approve the petition on humanitarian grounds is unpersuasive. There is no basis to approve a Form I-360 petition without the requisite evidence establishing each of the criteria referenced above. Counsel's contention without the requisite argument and pertinent precedent decisions demonstrating that the AAO's prior decision was based on an incorrect application of law or USCIS policy 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, the evidence will not be reconsidered, and the previous decision of the AAO will be affirmed.

ORDER: The motion is dismissed. The AAO's August 13, 2010 decision is affirmed. The petition remains denied.