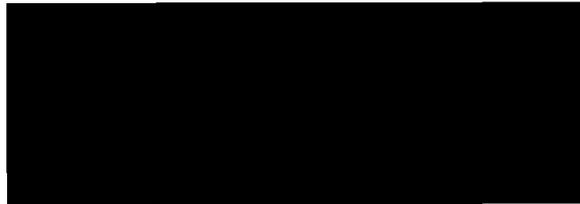




U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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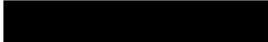
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DATE: **APR 24 2012**

Office: VERMONT SERVICE CENTER

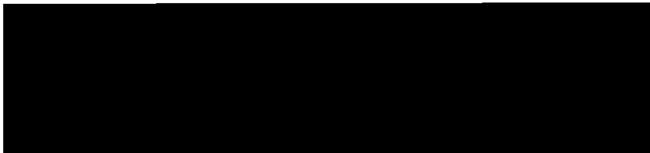
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IN RE:

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:

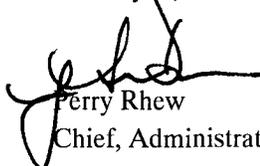


INSTRUCTIONS:

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. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal and affirmed its decision on a subsequent motion to reopen and reconsider. The matter is once more before the AAO on a second motion to reconsider. The motion will be dismissed, and the approval of the petition will remain 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 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 (USC) may self-petition for immigrant classification if, among other elements, the alien demonstrates that he or she entered into the marriage with the USC 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.

The director revoked approval of the petition because the petitioner did not establish that he married his USC spouse in good faith or that his USC spouse 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 and a subsequently filed motion to reopen and reconsider its prior decision. The petitioner, through counsel, has now filed this second motion to reconsider. Counsel does not submit new facts supported by affidavits or other evidence as a basis to reopen the matter but rather asserts that pertinent precedent decisions support a reversal of the AAO’s prior decisions.

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 asserts that the lack of a specific definition of the term “good faith” in section 204(A)(1)(A)(iii) of the Act underscores the legislative intent that this term be examined in a flexible manner and dependent on the facts and circumstances of each particular case. Counsel cites two additional decisions, *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1988) and *Damon v. Ashcroft*, 360 F3d 1084 (9<sup>th</sup> Cir. 2004). Both of these decisions rely on *Bark v. INS*, 511 F.2d 1200 (9<sup>th</sup> Cir.1975) and subsequent decisions which hold that a key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. The court in *Damon v. Ashcroft*, held that in determining whether such an intent exists, judges must look to objective evidence and refrain from imposing their own norms and subjective standards on the determination. Counsel points to the petitioner’s filing as “married filing separately” on his income tax returns from 1997 until 2005<sup>1</sup> and a

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<sup>1</sup> The record does not include a copy of a federal tax return for 2003. The record does not include certified copies of any of the tax returns filed from 1997 until 2005.

problematic bank account as objective evidence of the petitioner's intent to establish a life together with the USC spouse. The director previously set out the deficiencies in the tax returns and the bank account and the petitioner has not provided additional testimony addressing those deficiencies. Upon review of counsel's motion for reconsideration and the cited decisions, the petitioner has not established that the AAO's prior decisions were based on an incorrect application of law of Service policy. The record does not include sufficient probative testimony or other evidence to establish that the petitioner entered into the marriage in good faith.

The petitioner does not contest United States Citizenship and Immigration Services (USCIS) determination that he failed to show the requisite battery or extreme cruelty during the marriage.

*Conclusion*

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 AAO will be affirmed.

**ORDER:** The motion is dismissed. The AAO's October 5, 2010 and May 31, 2011 decisions are affirmed. The approval of the petition remains revoked.