



U.S. Citizenship
and Immigration
Services

B9

DATE: **DEC 18 2012** Office: VERMONT SERVICE CENTER

File: [REDACTED]

IN RE: Petitioner: ANA ROSA ALMONTE, A.K.A. ROSA ALMONTE-FORTI

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Jon Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed. The appeal will remain dismissed and the petition will remain denied.

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.

On April 13, 2011, the director denied the petition for failure to establish that the petitioner entered into marriage with her husband in good faith and that he subjected her to battery or extreme cruelty during their marriage. The petitioner, through counsel, timely filed the Form I-290B Notice of Appeal or Motion indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days. None were received and in its September 12, 2011 decision dismissing the appeal, the AAO summarily dismissed the appeal for failure to specifically identify any erroneous conclusion of law or statement of fact as a basis for the appeal.

A motion to reopen 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 must: (1) 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 U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Counsel has not submitted new affidavits or other documentary evidence to meet the requirements of a motion to reopen. Counsel claims that new evidence was submitted with the appeal filed May 10, 2011 and asserts that it was erroneously dismissed. On motion, counsel submits a copy of the claimed submission and a copy of a Federal Express receipt. However, counsel fails to establish that the Federal Express mailing contained the supporting documents at the time he filed the appeal and the Form I-290B indicates that a brief and/or evidence would be submitted to the AAO within 30 days of filing. Counsel’s submission also fails to meet the requirements for a motion to reconsider. Counsel’s statement on motion consists of four sentences in which he asserts that supporting documentation was submitted with the appeal. Counsel fails to establish that the AAO did not consider any credible evidence relevant to the petition in violation of the statute or regulations. Counsel does not cite any binding precedent decisions or other legal authority establishing that the AAO’s prior decision incorrectly applied the pertinent law or agency policy. Nor does he show that the AAO’s prior decision was erroneous based on the evidence of record at the time. Consequently, the motion to reconsider must be dismissed. *See* 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be dismissed).

ORDER: The motion is dismissed. The September 12, 2011 decision of the Administrative Appeals Office is affirmed and the petition remains denied.