

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: DEC 20 2012

Office: VERMONT SERVICE CENTER

File:

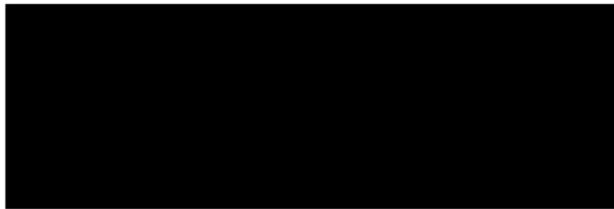


IN RE: Petitioner:



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 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 with the field office or service center that originally decided your case by filing a 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The director denied the petition and certified his decision to the AAO for review. The AAO affirmed the director's decision and the petition remained denied. The petitioner then filed a motion to reopen and reconsider. The AAO dismissed the motion and affirmed its prior decision to deny the petition. The matter is now again before the AAO on a second motion to reopen and reconsider. The motion will be dismissed. The previous decision of the AAO will be affirmed. 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.

The director denied the petition because the petitioner had not established that his former spouse subjected him to battery or extreme cruelty and that he had entered into the marriage in good faith.

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 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. 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).

On the instant motion, the petitioner requests that the AAO consider all of his previously submitted documentation as evidence of abuse in his marriage. The petitioner resubmits a brief and personal statement that were previously filed in support of the petition. He also provides a copy of an August 21, 2002 memorandum issued by the legacy Immigration and Naturalization Service (INS) regarding the eligibility to self-petition as an intended spouse of an abusive U.S. citizen or lawful permanent resident.

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).

The petitioner has not submitted affidavits or other documentary evidence to meet the requirements of a motion to reopen. The petitioner's submission also fails to meet the requirements for a motion to reconsider. The petitioner fails to show the relevance of the 2002 INS memorandum to his case. He instead requests that the AAO consider all of his previously submitted documentation as evidence of abuse in his marriage. In the prior decisions of the AAO, that evidence was properly evaluated and found to be insufficient to establish the petitioner's eligibility under the pertinent statute and

regulations. The petitioner does not cite precedent decisions to establish that the AAO's prior decision incorrectly applied the pertinent law or agency policy and he does not show that the AAO's prior decision was erroneous based on the evidence of record at the time of the decision. Consequently, the motion to reopen and 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 April 18, 2011 and March 12, 2012 decisions of the Administrative Appeals Office are affirmed. The petition remains denied.