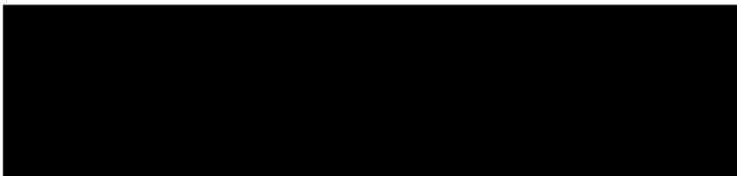


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

Date: **FEB 27 2012**

Office: VERMONT SERVICE CENTER

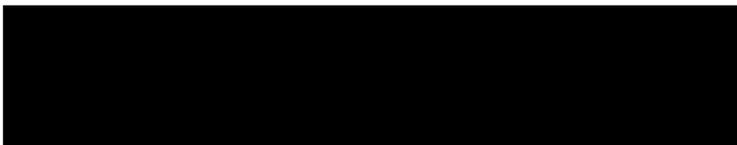
FILE: 

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:

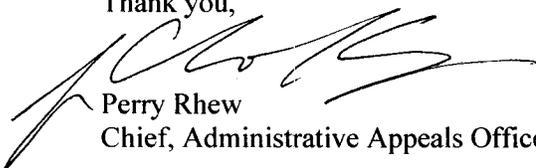


INSTRUCTIONS:

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 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 (Form I-360) and the Administrative Appeals Office (AAO) dismissed the appeal and dismissed a subsequently filed motion to reconsider. The matter is now before the AAO on a motion to reopen or reconsider. The motion will be dismissed. The AAO's previous orders will be affirmed.

The director denied the Form I-360 upon finding that the petitioner had failed to establish that she had resided with her U.S. citizen spouse, had been subject to battery and/or extreme cruelty by her spouse, or entered into their marriage in good faith. *See Director's Decision*, dated May 5, 2010.

On October 6, 2010, the AAO summarily dismissed the petitioner's appeal for failure to articulate a basis for the appeal. *See AAO's Decision*, dated October 6, 2010.

On June 22, 2011, the AAO dismissed the petitioner's motion to reconsider as untimely filed and for failure to meet applicable requirements under 8 C.F.R. § 103.5(a)(3).

In his present motion to reopen and reconsider, counsel reasserts the petitioner's eligibility and contends that the AAO improperly denied the petitioner's prior motion. *See Motion to Reconsider*, dated July 21, 2011. In support of his contentions, counsel submits only the referenced motion to reconsider. The entire record was reviewed in rendering a decision in this case.

8 C.F.R. § 103.5(a) provides, in pertinent part:

(2) Requirements for motion to reopen.

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. . .

(3) Requirements for motion to reconsider.

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.

In his motion to reopen, counsel fails to state any new facts that have developed since the AAO's decision that have any bearing on the petitioner's case. Counsel also submits no additional, supporting evidence.

In his motion to reconsider, counsel states that he disagrees with the AAO's characterization that the petitioner's prior motion was "improperly filed." Counsel contends that, contrary to the AAO's October 6, 2010 decision, the petitioner properly filed a brief and supporting documentation with the Vermont Service Center. Counsel notes that the AAO concedes that such documentation was filed.

Counsel contends that the AAO should not “quibble about an alleged late filing” of the motion when the original decision of the AAO was incorrect. Counsel contends that the AAO’s decisions are contradictory and the petitioner is eligible for immigrant classification under the Violence Against Women Act (VAWA). Counsel contends that a review of the merits of the petitioner’s case should not be barred by questionable filing and fee rules.

Counsel’s contentions are unpersuasive. The AAO’s decisions are not contradictory. In dismissing the petitioner’s prior motion the AAO noted that counsel filed a brief with the Vermont Service Center which was entitled “Memorandum in Support of Petitioner’s VAWA Motion to Reconsider,” in which counsel requested that the Vermont Service Center reconsider its denial of the petitioner’s Form I-360. Counsel did not file the brief with the appeal and did not forward a copy of the brief to the AAO in compliance with 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to the Form I-290B, Notice of Appeal.

Counsel fails to make any argument supported by pertinent precedent decisions establishing that the AAO’s prior decisions were based on an incorrect application of law or agency policy. Counsel’s claims on motion fail to establish that the AAO’s prior decisions were erroneous. Counsel’s submission fails to meet the requirements of a motion to reopen or reconsider and consequently must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed. The AAO’s decisions, dated October 6, 2010 and June 22, 2011 are affirmed. The petition remains denied.