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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: **JAN 04 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 the \$630 fee. 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 (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the 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.

The director denied the petition for failure to establish that the petitioner entered into marriage with his U.S. citizen wife in good faith, that he resided with her and that she subjected him to battery or extreme cruelty. In its May 23, 2011 decision, the AAO dismissed the appeal because counsel’s claims and the evidence submitted below and on appeal failed to overcome the director’s grounds for denial. On motion, counsel asserts that the AAO mischaracterized statements of the petitioner and his sister and gave undue weight to the petitioner’s prior sworn statement.

Counsel’s submission fails to meet the requirements for a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(3) prescribes:

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.

With the exception of four and a half paragraphs, counsel’s brief on motion repeats verbatim his entire brief previously submitted on appeal. In the new paragraphs, counsel asserts that the AAO erred in its assessment of certain evidence, but counsel cites no precedent decisions to establish that the AAO’s prior decision incorrectly applied the pertinent law or agency policy. Counsel also submits an additional affidavit from the petitioner dated June 21, 2011, but counsel fails to 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 to reconsider is dismissed. The May 23, 2011 decision of the Administrative Appeals Office dismissing the appeal is affirmed and the petition remains denied.