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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: **JUL 06 2012** Office: VERMONT SERVICE CENTER

FILE:

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (“the director”), denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed. The AAO’s previous decision will be affirmed and the petition will remain denied.

The petitioner seeks immigrant classification under 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 October 14, 2010, the director denied the petition, determining that the petitioner had not established she had entered into a qualifying relationship in good faith and that she is a person of good moral character. On April 25, 2011, the AAO dismissed the subsequently filed appeal, concurring with the director’s decision. On May 24, 2011, the petitioner, through counsel, filed a motion to reopen and reconsider the AAO’s decision.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: “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.” 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.

The AAO previously discussed and set out the deficiencies of the statements submitted by the petitioner, the statements of those who submitted statements on her behalf, as well as the documentary evidence previously submitted. On this motion to reopen and reconsider, counsel for the petitioner again asserts that the petitioner’s written and verbal answers under oath at her adjustment interview were inadvertent, innocent mistakes due to the petitioner’s limited exposure to the English language and the lack of counsel in the hostile interrogation. Accordingly, counsel contends that the petitioner’s false sworn testimony that she had never been arrested does not preclude her from establishing her good moral character. Counsel also avers that the petitioner entered into the marriage in good faith. Counsel attaches previously submitted documentation as well as the petitioner’s May 23, 2011 personal statement. The petitioner repeats that she dated the claimed abusive United States citizen (USC) for three years prior to marriage and lived with him after their marriage as husband and wife. The petitioner also claims that if she had an interpreter at the adjustment interview or had counsel present, she would not have unintentionally omitted her past wrongful arrest. The petitioner claims further that as her husband was present at the adjustment interview her omission of her prior arrest was to maintain her pride and honor and not to obtain an immigration benefit.

The petitioner’s declaration submitted on motion does not include any probative testimony establishing her intent when she entered into the marriage. She does not provide any additional probative testimony of her courtship, the wedding ceremony, her joint residence with the claimed

USC abuser, or any of their shared experiences, apart from the claims of abuse. The petitioner's reiteration that she entered into the marriage in good faith and not to circumvent immigration laws does not provide the necessary descriptive testimony to assist in ascertaining her actual intent when entering into the marriage. Similarly, the petitioner's statement on motion does not include clarifying testimony regarding her sworn statement to an immigration officer that she had not been previously arrested. The petitioner appears to offer two possible explanations for her failure to reveal her arrest. One, that her mistake was inadvertent because she did not understand English and did not have counsel present; or two, that she deliberately omitted the information because her husband was present and she did not want to reveal her prior arrest. However, neither explanation is sufficient to overcome our prior determination.

The record on motion does not provide new facts supported by affidavits or other documentary evidence sufficient as a basis to reopen this matter. The petitioner and counsel also fail to present reasons for reconsideration of the prior decision supported by pertinent precedent decisions. 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 and the previous decision of the AAO will be affirmed.

**ORDER:** The motion is dismissed. The AAO's April 25, 2011 decision is affirmed and the petition remains denied.