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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

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DATE: **MAY 08 2012** OFFICE: VERMONT SERVICE CENTER

FILE:

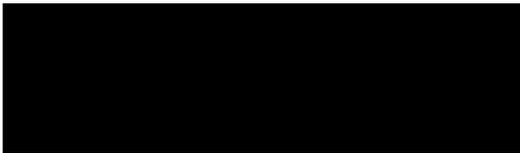


IN RE: Petitioner:



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 service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed its decision dismissing the appeal in response to three subsequent Forms I-290B, Notice of Appeal or Motion, filed by counsel. The matter is again before the AAO on a motion to reconsider. The motion to reconsider will be granted. The appeal will remain dismissed. 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 citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner failed to establish: (1) that he is not subject to the provisions of section 204(g) of the Act; (2) that he had a qualifying relationship with his wife; (3) that his wife subjected him to battery or extreme cruelty during their marriage; and (4) that he married his wife in good faith. On motion to reconsider, counsel submits a brief and copies of previously-submitted evidence.

Pertinent Facts and Procedural History

The facts and procedural history of this case have been discussed in our prior decisions and we will only repeat certain facts here as necessary. The director denied the petition on the grounds listed above on April 1, 2008, and we dismissed counsel's appeal on February 10, 2009. Although we withdrew the director's findings regarding the existence of a qualifying relationship between the petitioner and his wife, we agreed with his remaining grounds for denial of the petition. We granted counsel's subsequent motion to reconsider on August 4, 2009 and affirmed our prior decision, and on October 28, 2010 we granted counsel's subsequent motion to reopen and again affirmed our prior decision.

Counsel filed a timely Form I-290B relating to our October 28, 2010 decision and claimed he was filing an appeal. However, as we noted in our June 2, 2011 decision, there is no regulatory provision for the appeal of a decision issued by the AAO; we exercise appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003) and subsequent amendments. Although counsel did not state he was filing a motion, we nonetheless reviewed his submission to ascertain whether it met the requirements of a motion to reopen or reconsider set forth at 8 C.F.R. § 103.5. However, the submission did not meet those requirements because counsel did not include his brief along with his initial submission as required by 8 C.F.R. §§ 103.5(a)(2)-(3) but instead submitted it separately, at a later date. His initial submission, therefore, consisted only of the Form I-290B and a copy of our October 28, 2010 decision, which did not satisfy the requirements of 8 C.F.R. §§ 103.5(a)(2)-(3), and we dismissed it pursuant to 8 C.F.R. § 103.5(a)(4).

The AAO reviews these matters on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon reconsideration of our prior decision, we find that the petitioner has failed to establish any error.

Discussion

Counsel's arguments made on motion to reconsider establish no error in our June 2, 2011 decision. He does not dispute our finding that his prior submission could not be adjudicated as an appeal because the regulations contain no provision for the appeal of a decision issued by the AAO. Although he argues that we should have considered the arguments made in his brief despite the fact that he submitted it subsequent to his initial submission, he does not address the fact that we adjudicated the matter not as an appeal, but rather as a motion to reopen and a motion to reconsider. Because we adjudicated the matter as a motion, counsel's assertion that his brief "was submitted timely" is incorrect: although 8 C.F.R. § 103.3(a)(2)(vii) states that an appealing party may be provided additional time during which to submit a brief and/or additional evidence to the AAO, the regulations governing motions to reopen and reconsider contain no similar provision and instead require that all supporting documentation be submitted with the initial filing. See 8 C.F.R. §§ 103.5(a)(2)-(3). As there is no corresponding thirty-day period of time during which to submit a brief in support of a motion to reopen or a motion to reconsider, it is irrelevant whether counsel submitted his brief before that period of time ended.

Because counsel's brief was not submitted with his initial submission, as required by 8 C.F.R. §§ 103.5(a)(2)-(3), we properly excluded it from consideration in adjudicating the matter as a motion to reopen and a motion to reconsider. Counsel's initial submission consisted of two items: (1) the Form I-290B, which contained no meaningful arguments by counsel; and (2) a copy of our October 28, 2010 decision, which did not satisfy the requirements of 8 C.F.R. §§ 103.5(a)(2)-(3). Because those regulatory requirements were not satisfied, we properly dismissed the motion to reopen and reconsider pursuant to 8 C.F.R. § 103.5(a)(4).

The arguments made by counsel on motion to reconsider fail to establish that our previous decision involved any incorrect application of law or USCIS policy, or any other error. Accordingly, the petitioner has failed to establish that: (1) he is not subject to the provisions of section 204(g) of the Act; (2) his wife subjected him to battery or extreme cruelty during their marriage; and (3) he married his wife in good faith.

Conclusion

The petitioner has failed to establish any error in our prior decision. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and the appeal must remain dismissed.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. at 375. The petitioner has not met his burden.

ORDER: The motion is granted. The June 2, 2011 decision of the Administrative Appeals Office is affirmed and the petition remains denied.