



U.S. Citizenship
and Immigration
Services

(b)(6)



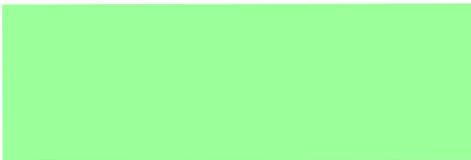
DATE: **AUG 14 2013** Office: VERMONT SERVICE CENTER

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and 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 on the basis of his determination that the petitioner had failed to establish a qualifying relationship with a citizen of the United States and eligibility for immediate relative classification based on that relationship because her self-petition was filed more than two years after her marriage was annulled. On April 8, 2013, the AAO dismissed the petitioner’s subsequent appeal.

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’s submission fails to meet the requirements for a motion to reconsider. On motion, the petitioner, through counsel, submits a brief. Counsel’s brief repeats much of the same arguments submitted on appeal and asserts that the AAO may not classify the two-year deadline for filing a self-petition as a statute of repose because the regulations and the Act are silent on this issue. Counsel further argues that the AAO should not classify the deadline as a statute of repose in this case because it would result in the petitioner’s loss of her permanent resident status and lead to deportation. Counsel cites to the cases *Moreno-Gutierrez v. Napolitano*, 794 F.Supp.2d 1207 (D. Colo. 2011), *Bamidele v. INS*, 99 F.3d 557 (3d. Cir. 1996), and *Choe v. INS*, 11 F.3d. 925 (9th Cir. 1993) to support his claims. As stated in its decision on appeal, the AAO is not bound to follow the decisions of a United States district court. Likewise, the AAO is not bound by decisions of federal circuit courts from differing jurisdictions. *Bamidele v. INS* and *Choe v. INS* are further distinguishable from the instant case because they held that the government cannot indefinitely act on derogatory information such as marriage fraud or immigrant intent to rescind a lawful permanent resident’s status. These cases do not address the issue of whether visa petition filing deadlines are subjected to equitable tolling as argued by counsel. Further, counsel does not articulate how the AAO violated them or otherwise incorrectly applied the pertinent law or agency policy. Counsel also does not 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 is dismissed. The April 8, 2013 decision of the Administrative Appeals Office is affirmed. The appeal remains dismissed and the petition remains denied.