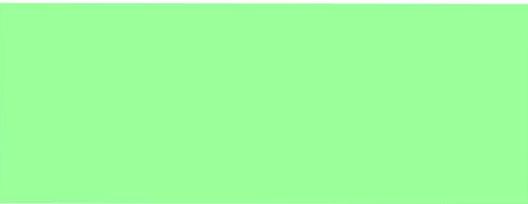


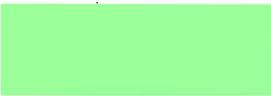
(b)(6)

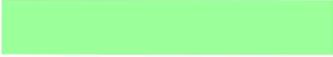
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

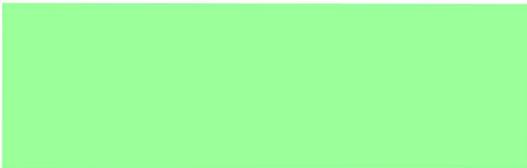


Date: **DEC 13 2013** Office: VERMONT SERVICE CENTER File: 

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:

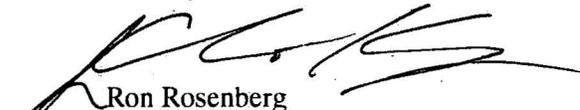


INSTRUCTIONS:

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) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and 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. On June 28, 2012, the director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by the petitioner’s wife during their marriage. In its December 20, 2012 decision, the AAO summarily dismissed the appeal for failure to identify specifically any erroneous conclusion of law or fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

Counsel has not submitted on motion new affidavits or other documentary evidence to meet the requirements of a motion to reopen. Counsel’s submission also fails to meet the requirements for a motion to reconsider. Counsel contends that the AAO’s statement in its prior decision, that the appeal brief “repeats much of the brief submitted below and mainly quotes from the evidence that has already been submitted and considered,” is arbitrary and capricious because new facts are not needed for a motion to reconsider.¹ Counsel does not acknowledge that the petitioner previously filed an appeal, not a motion to reconsider. An appeal is summarily dismissed if it fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. *See* 8 C.F.R. § 103.3(a)(1)(v). While the AAO also noted in its prior decision that no new evidence was submitted on appeal, the AAO did not, contrary to counsel’s claim, impose an additional requirement for the appeal.

Counsel asserts that the petitioner established that his wife subjected him to extreme cruelty, but counsel does not cite any binding precedent decisions or other legal authority establishing that the AAO’s prior decision incorrectly applied the pertinent law or agency policy. Nor does counsel 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 December 20, 2012 decision of the Administrative Appeals Office is affirmed and the petition remains denied.

¹ Counsel cites *Matter of Ramos*, 23 I&N Dec. 336 (BIA 2002) to assert that a motion to reconsider is a request to reassess an argument or aspect of a case that was previously overlooked.