



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **DEC 30 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:

SELF-REPRESENTED

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 affirmed its decision in response to the petitioner’s subsequently filed motion to reopen. The matter is now before the AAO on appeal. The appeal will be rejected.

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 jointly resided with his former wife and that he entered into marriage with her in good faith. On April 3, 2012, the AAO dismissed the appeal on these same grounds. In its August 7, 2013 decision, the AAO determined that the petitioner married his former wife in good faith but failed to establish joint residence. Additionally, the AAO determined that beyond the director’s decision, the petitioner failed to establish his good moral character. The petitioner filed a third Form I-290B Notice of Appeal or Motion incorrectly indicating that he was filing an appeal of the AAO’s last decision. The AAO exercises 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. While the AAO has appellate jurisdiction over Form I-360 petitions, the AAO has no jurisdiction over the petitioner’s third Form I-290B because no appeal lies from the AAO’s dismissal of a prior appeal.

To seek further administrative review of an AAO decision, a petitioner may file a motion to reopen or reconsider pursuant to the regulations at 8 C.F.R. § 103.5(a)(2)-(3). However, even when considered as a motion, the petitioner’s submission would be dismissed. 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).

The petitioner stated on the Form I-290B that a brief and/or additional evidence would be submitted to the AAO within 30 days. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R §§ 103.5(a)(2) and (3). To date, the AAO has not received a brief or any further evidence to meet the requirements of a motion. Consequently, the petitioner’s submission would not meet the requirements for a motion to reopen or reconsider and would be dismissed. *See* 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be dismissed). The April 3, 2012 and August 7, 2013 decisions of the Administrative Appeals Office are affirmed.

ORDER: The appeal is rejected.