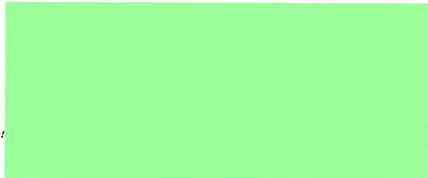




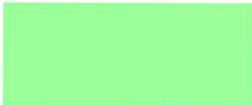
U.S. Citizenship  
and Immigration  
Services

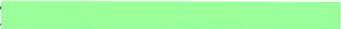
(b)(6)



Date: **JAN 03 2013**

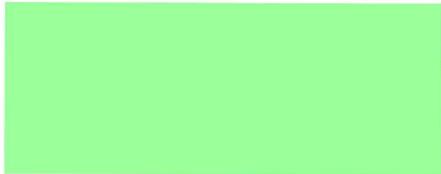
Office: VERMONT SERVICE CENTER

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:

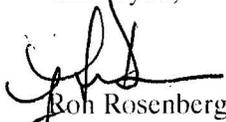


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 in accordance with the instructions on 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,

  
Ron Rosenberg

Acting Chief, Administrative Appeals Office

(b)(6)

**DISCUSSION:** The Director, Vermont Service Center (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. 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 December 30, 2011, the director denied the petition for failure to establish that the petitioner’s wife subjected him to battery or extreme cruelty during their marriage. The petitioner, through counsel, timely filed the Form I-290B Notice of Appeal or Motion indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days. None were received and in its June 29, 2012 decision, the AAO summarily dismissed the appeal for failure to specifically identify any erroneous conclusion of law or statement of fact as a basis for the appeal.

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).

Counsel has not submitted new affidavits or other documentary evidence to meet the requirements of a motion to reopen. Counsel’s statement on motion consists of two sentences in which he asserts that new evidence was submitted with the appeal filed January 30, 2012 and that it was erroneously summarily dismissed. On motion, counsel submits a copy of the claimed submission and a copy of a U.S. Postal Service receipt. However, counsel fails to establish that the U.S. Postal Service mailing contained the supporting documents at the time he filed the appeal and the Form I-290B indicates that a brief and/or evidence would be submitted to the AAO within 30 days of filing. Counsel fails to establish that the AAO did not consider any credible evidence relevant to the petition in violation of the statute or regulations and does not show that the AAO’s prior decision was erroneous based on the evidence of record at the time. Consequently, the motion to reopen 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 June 29, 2012 decision of the Administrative Appeals Office is affirmed and the petition remains denied.