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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

Date:

MAY 27 2014

Office: VERMONT SERVICE CENTER File:

IN RE:

Petitioner:

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

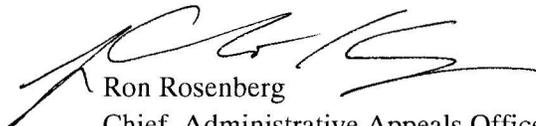
SELF-REPRESENTED

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 upon granting a motion to reopen. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be dismissed. The previous decisions will be affirmed. The petition will remain denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by his U.S. lawful permanent resident spouse during his marriage.

The director denied the petition for failure to establish that the petitioner entered into the marriage with his U.S. lawful permanent resident wife in good faith, and that he was battered or subjected to extreme cruelty by his wife during their marriage. In its decision, dated March 8, 2013, the AAO dismissed the petitioner’s subsequent appeal. On August 9, 2013, the AAO granted the petitioner’s motion to reopen, and determined that the petitioner established that he married his wife in good faith, but that the petitioner failed to establish that she subjected him to the requisite abuse. The previous AAO decisions are incorporated here by reference.

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).

On motion to reopen, the petitioner submits an additional affidavit from himself; another affidavit from his wife’s sister-in-law, [REDACTED] and another evaluation letter from [REDACTED]. The petitioner also resubmits photographs which he previously submitted with his first motion. In his affidavit the petitioner describes his wife’s argumentative, manipulative, and rude behavior. In her affidavit Ms. [REDACTED] reiterates her prior statements. [REDACTED]’s evaluation quotes statements made by the petitioner in prior sessions, and from his most recent session on August 26, 2013.

In its August 9, 2013 decision, the AAO stated that Ms. [REDACTED] mentioned an incident in which the petitioner and his wife had a loud argument, and afterwards Ms. [REDACTED] saw the petitioner with scratches on his face and a torn shirt, and was present when the petitioner’s wife spit on the petitioner’s face. The AAO stated that the alleged incident was not mentioned in any of the petitioner’s personal statements. The AAO also noted that Ms. [REDACTED] recounted another occasion when she saw the petitioner with a busted lip, but that Ms. [REDACTED] did not provide further probative information about the incident, which the petitioner himself also did not discuss. The petitioner did not discuss the incident in which his wife tore his shirt and scratched his face in his 16-page response to the director’s first Request for Evidence (RFE) and his 11-page response to the director’s second RFE), in his seven-page affidavit on appeal, or in his four-page affidavit submitted with his first motion. Nor did the petitioner discuss the incident during any of his sessions with [REDACTED]. The petitioner does not explain why he did not mention the incident in any of his prior statements. The petitioner’s brief description of the incident for the first

time in his second motion is insufficient to establish that his wife battered him or subjected him to extreme cruelty.

The petitioner's submission in the instant motion does not state any new facts to be proved and his letter and the letters from Ms. [REDACTED] and [REDACTED] repeat the same facts previously stated in the first motion to reopen. The petitioner also does not cite to binding case law or precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, as required for a motion to reconsider at 8 C.F.R. § 103.5(a)(3).

Accordingly, the motion to reopen and 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 March 8, 2013 and August 9, 2013 decisions of the Administrative Appeals Office are affirmed and the petition remains denied.