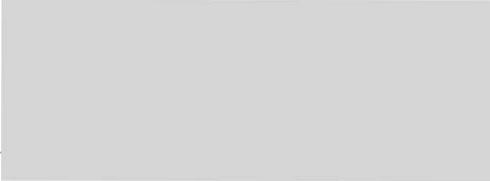




U.S. Citizenship
and Immigration
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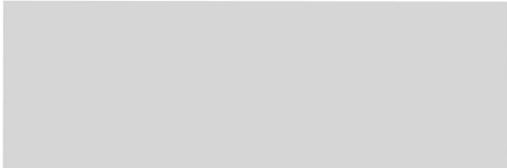
DATE: **APR 17 2015**

FILE#: [REDACTED]
PETITION RECEIPT#: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center (the director) denied the immigrant visa petition (Form I-360) and dismissed a subsequent motion. The matter was appealed to the Administrative Appeals Office (AAO), and the appeal was dismissed. The matter is again before the AAO on a motion to reopen and reconsider. The motion is dismissed. The AAO decision, dated September 12, 2014, is affirmed. The underlying petition remains denied.

Pertinent Facts and Procedural History

The petitioner is a citizen of Bangladesh who entered the United States as an F-1 nonimmigrant student on February 22, 1999. He 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 his U.S. citizen spouse.¹

The director denied the petition on November 6, 2012, on the basis that the petitioner failed to establish that his former spouse subjected him to battery or extreme cruelty during the marriage. The director affirmed the decision on motion on July 11, 2013. On September 12, 2014, we dismissed the petitioner's appeal on the ground that the petitioner failed to establish, by a preponderance of the evidence, that his former spouse subjected him to battery or extreme cruelty during the marriage. On motion to reopen and reconsider the petitioner submits a brief.

Applicable law

The regulation provides, in pertinent part, at 8 C.F.R. § 103.5(a):

(2) *Requirements for motion to reopen.* 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.

* * *

(3) *Requirements for motion to reconsider.* A motion to reconsider must 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed

¹ Previous decisions in this case indicate that the petitioner's former spouse is a lawful permanent resident. U.S. Citizenship and Immigration (USCIS) records reflect, however, that his former spouse became a naturalized U.S. citizen on October 18, 2011.

Analysis

On motion, the petitioner asserts that our September 12, 2014 decision was arbitrary, that we relied unduly on trivial inconsistencies in the record, and that we failed to fully consider the evidence of abuse and harm in his case. The petitioner restates assertions, made on appeal, that his former wife's treatment amounted to extreme cruelty, and that inconsistencies about events surrounding his hospitalization are insignificant, were due to his confusion at the time, and should not affect the credibility or weight of his evidence. The petitioner cites to the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which provides guidance on what constitutes battery and extreme hardship. He also refers to the U.S. Ninth Circuit Court of Appeals decision, *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003), for the proposition that the abuse that he suffered amounted to a pattern of extreme cruelty as contemplated under the Violence Against Women Act 2004 (VAWA). The petitioner also refers to our unpublished decisions and a "VAWA Manual" publication by the Immigrant Legal Resource Center (ILRC) to support assertions that the treatment that he was subjected to by his former spouse constituted extreme cruelty.

Motion to Reopen

The petitioner does not state any new facts and he submits no new affidavits or other documentary evidence. His motion to reopen our September 12, 2014 decision is therefore dismissed.

Motion to Reconsider

The petitioner also fails to establish, with precedent decisions, case law, or Service policy, his claim that our decision was arbitrary and failed to assign proper weight to evidence in his case. Although the petitioner refers to our unpublished decisions and an ILRC "VAWA Manual" to support his assertions, the ILRC publication has no precedential value in the petitioner's case. The petitioner also failed to demonstrate that the facts in our unpublished cases were similar to his case. Moreover, unpublished decisions are not binding on us or U.S. Citizenship and Immigration Services (USCIS) officers in their administration of the Act, as they have not been designated as precedents. 8 C.F.R. § 103.3(c).

The Ninth Circuit Court of Appeals *Hernandez v. Ashcroft* case is also not binding precedent, as the petitioner's case arose outside of the Ninth Circuit. Furthermore, even if we were to defer to *Hernandez* as persuasive authority in this case, the facts constituting extreme cruelty in *Hernandez* are not analogous to the actions of the petitioner's wife as described in the record. The plaintiff in *Hernandez* was, for example, subjected to years of her abusive spouse's cycle of violence including brutal beatings and a stabbing in Mexico, leaving the plaintiff bleeding and locked in the home after the attacks without medical care, constant verbal abuse, and periods of contrition and emotional manipulation to convince the plaintiff to return to him after she had sought refuge with a relative in the United States. *Hernandez v. Ashcroft*, 345 F. 3d at 829-32, 840-41. Upon review, the *Hernandez* court determined that the plaintiff's husband's non-physical actions "in tracking Hernandez down and luring her from the safety of the United States through false promises and short-lived contrition are precisely the type of acts of extreme cruelty that 'may not initially appear violent but that are part of an overall pattern of violence.' 8 C.F.R. § 204.2(c)(1)(vi)." *Id.* at 840. In this case, the record does not demonstrate that the petitioner's former spouse's behavior was

similarly part of an overall pattern of violence or otherwise constituted extreme cruelty under the regulation.

The U.S. Second Circuit Court of Appeals clarifies in *Rosario v. Holder*, 627 F.3d 58, 63 (2d Cir. 2010) that, “whether an alien has been ‘battered or subjected to extreme cruelty’ under the statute generally entails a factual judgment[.]”² Furthermore, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS].” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). USCIS must consider all credible evidence relevant to a petitioner’s claim of abuse, however, the agency is not obligated to determine that all such evidence is sufficient to meet the petitioner’s burden. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

Our decision, dated September 12, 2014, discussed and analyzed the content and evidentiary value of all relevant evidence contained in the record. Upon review, we determined that the record, viewed in its totality, failed to establish by a preponderance of the evidence that the petitioner’s former spouse subjected him to battery or extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has failed to establish that our prior decision incorrectly applied pertinent law or agency policy, or that we failed to consider relevant evidence in violation of the statute or regulations. Accordingly, his motion to reconsider is dismissed.

Conclusion

The petitioner’s motion does not meet the requirements for a motion to reopen and motion to reconsider. The motion shall therefore be dismissed.

ORDER: The motion is dismissed. The AAO decision, dated September 12, 2014, is affirmed. The underlying petition remains denied.

² The petitioner’s case arises within the jurisdiction of the U.S. Second Circuit Court of Appeals.