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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: **JUL 07 2015**

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:

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](http://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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center (the director), denied the petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is before us again on a motion to reopen. The motion will be 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 his U.S. citizen spouse.

The director denied the petition, finding that the petitioner did not establish his eligibility to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act because he is subject to the bar to the approval of his petition under section 204(g) of the Act, for having married his wife while he was in removal proceedings, and he did not meet the requirements for a bona fide marriage exemption under section 245(e)(3) of the Act as he did not establish, by clear and convincing evidence, that he entered into the marriage in good faith. On appeal, we affirmed the director's findings.

On motion, the petitioner submits a "Request for Additional Time to Submit Supplemental Affidavit."

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The petitioner has not asserted any new facts to be provided in the reopened proceeding and has not submitted any additional evidence in support of the merits of his Form I-360 self-petition under section 204(a)(1)(A)(iii) of the Act. Accordingly, the petitioner's submission does not meet the requirements for a motion to reopen under section 8 C.F.R. § 103.5(a)(2).

The petitioner's submission also does not meet the requirements for a motion to reconsider at 8 C.F.R. § 103.5(a)(3) as the petitioner does not cite any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy, or show that our prior decision was erroneous based on the evidence of record at the time.

On the Notice of Appeal or Motion (Form I-290B), the petitioner checked box 2.d. at Part 3 indicating: "I am filing a motion to reopen a decision. My brief and/or additional evidence is attached." However, the petitioner did not submit a brief or additional evidence with his motion. Instead, he submitted a request for an additional 14 days to submit an affidavit due to inclement weather. The motion was filed on February 6, 2015 and to date, we have not received any brief, affidavit, or additional evidence.

The regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner may supplement an already-submitted appeal. This regulation, however, applies only to appeals, not to motions to reopen or reconsider. There is no analogous regulation which allows a party to submit new evidence in furtherance of a previously-filed motion.

Similarly, the instructions for Form I-290B provide that unlike appeals: "No additional time will be permitted to submit supplementary arguments or evidence in support of a motion to reopen or reconsider after the Form I-290B has been filed." Part 3 of the Form I-290B itself contains six boxes, one of which the petitioner must check to indicate whether the petitioner is filing an appeal or motion. Of the three boxes that pertain to motions, all indicate that the "brief and/or additional

evidence is attached” to the motion. The Form I-290B contains no provision for the submission of briefs or evidence after the filing of the motion. Pursuant to the regulation at 8 C.F.R. § 103.2(a)(1), every benefit request must be executed and filed in accordance with the form instructions, which are incorporated into the regulation.

As discussed, a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The plain language of the regulation makes clear that submission of supporting material and a legal basis for the motion is mandatory. This language, combined with the Form I-290B and related instructions, explicitly require a motion to reopen to be supported at the time of filing. Furthermore, even if the regulation and Form I-290B did permit supporting evidence to be submitted after the filing of a motion, the petitioner has not submitted any additional evidence.

A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion is denied. Our January 7, 2015 decision is affirmed. The appeal remains dismissed and the petition remains denied.