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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

D14

[redacted]

DATE: OCT 04 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:

[redacted]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the U nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed. The petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(U), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner did not establish: that he had been the victim of a qualifying crime or criminal activity; that he had suffered substantial physical or mental abuse based on the qualifying criminal activity; and, that consequently he could not establish any of the statutory eligibility requirements which all include that the crime is a qualifying crime or criminal activity. The AAO withdrew the director's determination that the petitioner had not established that he was a victim of a qualifying crime[1] but determined that the relevant evidence failed to establish that the petitioner suffered the requisite, substantial physical or mental abuse, under the standard and factors described in the regulation at 8 C.F.R. § 214.14(b)(1).

Counsel timely submits a Form I-290B, Notice of Appeal or Motion, checking the box indicating that he is submitting a motion to reopen and a motion to reconsider the prior decision with a brief and/or additional evidence attached. Counsel provides a statement on the Form I-290B expressing his disagreement with the AAO's prior decision and indicating that he would submit a brief elaborating on the issues along with further evidence.

The AAO notes that 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; however, 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). Thus, counsel's late-filed brief will not be considered.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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."

The regulation concerning motions to reconsider at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

> 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

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[1] Upon further review of the California statute (CPC 127), the offense for which the petitioner claims to be a victim and the regulation at 8 C.F.R. § 214.14(a)(14)(ii), setting out the criteria to identify the victim of the perjury, or in this matter the victim of the solicitation of perjury, the AAO erroneously withdrew the director's decision finding the petitioner had not established that he was a victim of a qualifying crime. As this matter will not be reopened, the AAO will not further discuss this issue.

> 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.

Counsel does not provide any new facts supported by affidavits or other documentary evidence; accordingly, there is no evidence to form a basis for reopening the matter for the consideration of new evidence.[2] Likewise, counsel does not submit any pertinent precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or United States *Citizenship and Immigration Services'* (USCIS) policy based on the evidence of record at the time of the initial decision. Counsel's assertion that the petitioner's harm is connected to the acts of in suborning the petitioner's perjury is unpersuasive. A review of the director's adverse decision and the AAO's prior decision shows that the director properly applied the statute and regulations in this matter to the facts before him and the AAO properly considered the issue of the petitioner's substantial physical or mental abuse pursuant to the regulations at 8 C.F.R. § 214.14(a)(8) and 8 C.F.R. § 214.14(b)(1). The AAO discussed the deficiencies of the evidence submitted, including the November 24, 2006 evaluation prepared by ., when determining that the petitioner had not established that he had suffered substantial mental abuse as the victim of a qualifying crime. Counsel does not address the deficiencies of the evidence as articulated by the AAO in his statement on the Form I-290B. Counsel's primary complaint on motion is that the petition was denied. As discussed in the prior decision, the petitioner has not met his burden of proof and the denial was the proper result under the statute and regulation. The motion fails to satisfy the requirements of a motion to reconsider.

The burden of proof in these proceedings rests solely with the petitioner. *Section 291 of the Act*, 8 U.S.C. § 1361. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the evidence will not be reconsidered, and the previous decision of the AAO will be affirmed.

ORDER: The AAO's November 12, 2010 decision is affirmed. The petition remains denied.

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[2] In a late submitted brief, counsel references the petitioner's affidavit throughout the brief. However, the petitioner's only affidavits in the record predate the director's decision dated February 24, 2010 and the AAO's decision dated November 12, 2010. The petitioner's earlier affidavits were previously considered in the director's and the AAO's decisions.