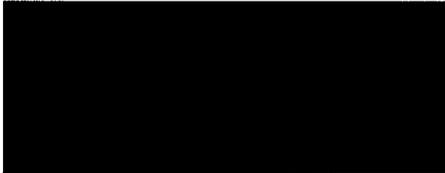


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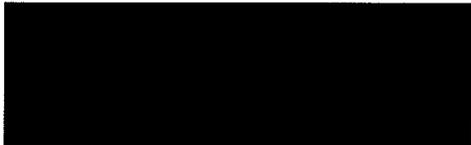
Office: VERMONT SERVICE CENTER

Date: DEC 05 2005

IN RE: Petitioner: 

PETITION: Petition for Special Immigrant Battered 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (Director), Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Ukraine who is seeking classification as a special immigrant 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 the battered spouse of a United States citizen.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

- (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
- (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;
- (D) Has resided . . . with the citizen or lawful permanent resident spouse;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
- (F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the information contained in the record, the petitioner wed United States citizen [REDACTED] on March 7, 2002 in New Brunswick, New Jersey. On April 30, 2002, the petitioner's spouse filed a Form I-130 in the petitioner's behalf. The petitioner filed a Form I-485, Application to Adjust Status, on May 24, 2002. The petitioner's spouse withdrew the Form I-130 on December 10, 2002, and the petition was denied. The petitioner was placed in removal proceedings on December 13, 2002.

On May 7, 2003, the petitioner filed the instant Form I-360 self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse during their marriage. On April 26, 2004, the director requested the petitioner to submit additional evidence to support his claim that he entered into his marriage in good faith, that he resided with his spouse, that he was battered by or subjected to extreme cruelty by his citizen spouse, and that he is a person of good moral character. The petitioner failed to respond to the director's request and the petition was denied on August 20, 2004.

The petitioner, through counsel, submitted a timely appeal on September 20, 2004. On appeal, counsel claims:

Neither I nor my client received any notices requesting evidence in support of self-petition. After monitoring this case number on Internet and seeing that one was sent out, I called the central number and requested for the notices to be sent to me. (Twice). None ever came.

A review of the record reflects that the Form I-360, prepared and submitted by counsel, indicates counsel's address as [REDACTED]. This is the same address that is listed on counsel's letterhead in the letter submitted by counsel at the time filing. The record does not reflect that counsel noted any change of his address prior to April 26, 2004, the date the director issued the request for evidence to counsel's address of record at [REDACTED].

The regulation at 8 C.F.R. § 292.5 states, in pertinent part:

Whenever a person is required by any of the provisions of this chapter to give or be given notice . . . such notice . . . shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

Accordingly, we find that the director properly issued the request for evidence to petitioner's counsel, at counsel's address of record. It should be noted that the record does not contain any evidence that the director's request for evidence was returned as undeliverable or for any other reason. It is further noted that

counsel does not contend that he failed to receive a copy of the director's denial of the petition which was also mailed to counsel at his address of record.¹

Based upon the above discussion, we find insufficient evidence to establish that the director committed any procedural error, or any error of fact or law, in denying the petition based on the petitioner's failure to establish eligibility. Given the fact that the director properly applied the statute and regulatory procedures to the petitioner's case, counsel's apparent failure to notify the Service of his change of address is not sufficient grounds to overcome the director's findings or to remand this case for further review.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ On the Form I-290B, counsel lists his address [REDACTED] "NY," but fails to highlight the change or provide any other notice to the Service of a change of his address, but he submitted Form G-28. With the appeal, counsel submits a Form G-28, dated May 5, 2003, which lists his address [REDACTED]