



U.S. Citizenship
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Services

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FILE:

EAC 05 155 52267

Office: VERMONT SERVICE CENTER

Date: DEC 03 2008

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)

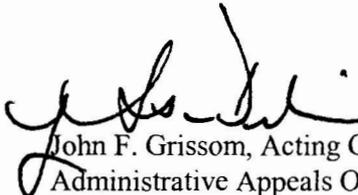
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed.

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 a United States citizen.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

In this matter, the director initially denied the petition on December 1, 2005, finding that the petitioner failed to establish that she had a qualifying relationship with a lawful permanent resident or citizen of the United States, was eligible for preference immigrant classification under section 201(b)(2)(A)(i) of the Act based on such a relationship, was battered or subjected to extreme cruelty by her former husband during their marriage, and that she entered into their marriage in good faith. In its August 1, 2006 decision on appeal, the AAO concurred with the director's determinations but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on October 23, 2006, which informed the petitioner that she had failed to establish the requisite battery or extreme cruelty and that she had entered into the marriage in good faith. In response to the NOID, the petitioner submitted the same evidence as had been previously submitted. The director determined that a letter signed by [REDACTED], that indicated the petitioner's depressive disorder was triggered by prolonged emotional and physical abuse by her spouse, is sufficiently credible in demonstrating that the petitioner was subjected to battery and/or extreme cruelty by her spouse. The director also determined that the previously submitted documentation was not sufficient in demonstrating that the petitioner married her spouse in good faith. The director denied the petition on March 29, 2007 and certified his decision to the AAO for review.

In the AAO's prior decision of August 1, 2006, incorporated here by reference, we fully discussed the pertinent facts and relevant evidence submitted, including the December 29, 2005 letter submitted by [REDACTED] M.D. As the AAO previously determined, [REDACTED] December 29, 2005 letter stating that the petitioner's depressive condition was triggered by prolonged emotional and physical abuse by her husband and that the petitioner eventually filed for divorce after filing a restraining order to deal with the domestic violence, is insufficient to establish the requisite abuse. The AAO specifically noted that [REDACTED] "provides no chronological, clinical, or substantive details of [the petitioner's spouse's] alleged abuse and its effects on the petitioner." The director's decision on this issue is withdrawn.

The petitioner in this matter submitted the same evidence in response to the NOID as had been previously submitted. The petitioner does not provide any further evidence on certification. The AAO concurs with the director's decision on the failure of the petitioner to establish that she entered into the marriage in good faith. The AAO finds, beyond the decision of the director, that the petitioner has not established she was battered or subjected to extreme cruelty by her former husband during their marriage. The AAO finds that the evidence does not establish that the petitioner was eligible for immediate relative classification based on her relationship to her spouse (who battered or subjected to her extreme cruelty) at the time she filed her petition, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's March 29, 2007 decision is affirmed in part; the AAO's August 1, 2006 decision is affirmed. The petition is denied.