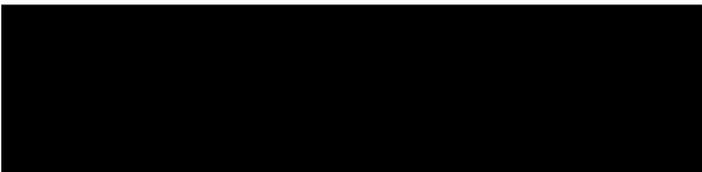


Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



B5

FILE:

EAC 05 140 53690

Office: VERMONT SERVICE CENTER

Date:

MAY 29 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. The director initially denied the petition on November 28, 2005, finding that as the petitioner failed to respond to the director's request for evidence, the record did not contain sufficient evidence to establish the petitioner's eligibility. On appeal, the AAO concurred with the director's determination and specifically found that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage and that he resided with his spouse. However, the AAO remanded the case because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii) (2006), as in effect at the time of filing and adjudication.¹ Upon remand, the director issued a NOID on March 1, 2007, which afforded the petitioner the opportunity to establish the requisite battery or extreme cruelty and residence. On June 4, 2007, the petitioner responded to the NOID by submitting an affidavit from his mother-in-law. The petitioner also resubmitted a copy of his child's birth certificate. Despite this submission, however, the director denied the petition, and indicated that the petitioner failed to respond to the NOID. The director certified his decision to the AAO and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. To date, the AAO has received nothing further from the petitioner.

As we have the opportunity on certification to review and consider the evidence that the director failed to consider, we find there was no harm to the petitioner and the matter will not be remanded for a second time. Upon review, the evidence submitted in response to the director's NOID is not sufficient to establish that the

¹ On April 17, 2007, Citizenship and Immigration Services (CIS) promulgated new regulations regarding requests for evidence and NOIDs. The rule became effective on June 18, 2007. 72 Fed. Reg. 19100-19107. As the instant petition was filed and adjudicated prior to the effective date of the new regulation, it is governed by the regulations cited in this decision.

petitioner was battered or subjected to extreme cruelty by his spouse during their marriage and that he resided with her spouse. The birth certificate, which was already contained in the record and, therefore, previously considered, contains no probative details regarding the petitioner's claimed residence with his spouse and is not relevant to his claim of battery or extreme cruelty. Further, the affidavit submitted by the petitioner's mother-in-law, [REDACTED], provides no testimony regarding the petitioner's claim of battery or extreme cruelty.

As it relates to the petitioner's claimed residence with his spouse, [REDACTED] states that the petitioner and her spouse resided at her home "for about one year," Ms. [REDACTED] does not provide the specific dates that the petitioner and his spouse purportedly resided in her home or other probative details regarding their residence together. The record contains no other testimonial or documentary evidence to establish the petitioner's claim of residence. As such, [REDACTED]'s general statement is not sufficient to establish that the petitioner resided with his spouse.

Accordingly, we concur with the findings of the director that the petitioner has not established that he resided with his spouse and that he was battered or subjected to extreme cruelty by his spouse during their marriage. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Here, that burden has not been met. Accordingly, the June 29, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The June 29, 2007 decision of the director is affirmed.