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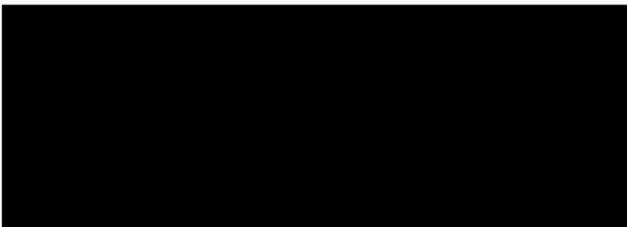
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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APR 28 2009



FILE:

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Office: VERMONT SERVICE CENTER

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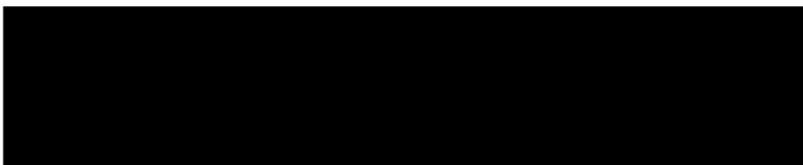
IN RE:

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:



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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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.

The director denied the petition because the record failed to establish that the petitioner had a qualifying relationship with a United States citizen or lawful permanent resident.

The petitioner, through counsel, submitted a timely appeal

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 further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , 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].

The petitioner in this case is a native and citizen of Canada who claims to have entered the United States on June 1, 1984. On April 29, 2002, the petitioner married R-R¹, who was born in Iran. The petitioner filed this Form I-360 on October 24, 2006. On April 30, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite qualifying relationship, joint residency, good-faith entry into the marriage, and battery or extreme cruelty. As the petitioner's response had not yet made its way to the file, on October 29, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite qualifying relationship, joint residency, good-faith entry into the marriage, and battery or extreme cruelty. The petitioner, through counsel, timely responded to the RFE with additional evidence, including copies of the documents previously submitted in response to the NOID. On February 25, 2008, the director denied the petition, finding that the petitioner did not establish that she had a qualifying relationship with a United States citizen or lawful permanent resident.

¹ Name withheld to protect individual's identity.

On appeal, counsel states that the petitioner “has provided all the credible evidence of her ex-husband’s status that is possible, and requests that CIS make one last attempt, with all the myriad of resources for such a search at its disposal, to verify his citizenship.” As supporting documentation, counsel submits: evidence that the petitioner has hired a private investigator to search for R-R-’s military records; evidence of correspondence with R-R-’s probation officer; copies of criminal court paperwork pertaining to R-R-; and a “Social Security and Identity Verification” for R-R-.

A review of the petitioner’s evidence and U.S. Citizenship and Immigration Services (USCIS) records, including R-R-’s A-file², finds no evidence that R-R- is either a United States citizen or a lawful permanent resident. Accordingly, we concur with the director’s determination that the petitioner did not establish a qualifying relationship as the spouse of a United States citizen and that she is eligible for classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa),(cc). Beyond the decision of the director, it is noted that the petitioner also has not demonstrated that her previous marriage to [REDACTED] was legally terminated. The “Stipulation and Order” submitted as evidence of the legal termination of this marriage was not signed by the judge. Without relevant documentation which establishes the termination of the prior marriage, for this additional reason, the petitioner has failed to establish that she had a qualifying relationship as the spouse of a United States citizen and that she was eligible for immediate relative classification based upon that relationship.

The petitioner has not demonstrated that she had a qualifying relationship with a United States citizen or lawful permanent resident and that she is eligible for classification based upon that relationship. She is consequently ineligible for immigrant classification pursuant to 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 appeal will be dismissed.

ORDER: The appeal is dismissed.

² The number is withheld to protect the petitioner’s identity.