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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 04 236 52942

Office: VERMONT SERVICE CENTER

Date: JAN - 2 2009

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)

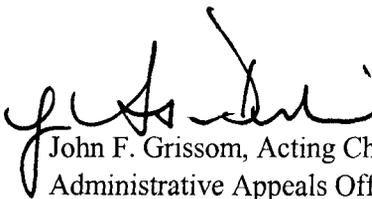
ON BEHALF OF PETITIONER:



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. 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 January 24, 2006, finding that the petitioner failed to establish that he entered into marriage with his United States citizen (USC) spouse in good faith. In its October 25, 2006 decision on appeal, the AAO concurred with the director's determination and also found that the petitioner had not established that he had resided with his USC spouse and that the petitioner may be subject to section 204(g) of the Act. The AAO remanded the petition, however, for issuance of a Notice of Intent to Deny (NOID) the petition in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on November 28, 2006, which informed the petitioner that he had failed to establish that he had entered into the marriage in good faith and that he had resided with his USC spouse. The petitioner did not provide a response to the NOID. The director denied the petition on June 4, 2007, determining that the petitioner had not submitted evidence to overcome the grounds of denial listed in the NOID and certified his decision to the AAO.

On certification, counsel for the petitioner asserts that the petitioner and his USC spouse resided together, albeit for a short time, as set forth in the August 3, 2004 affidavit of the petitioner's uncle, [REDACTED], and the petitioner's personal statements dated June 7, 2004 and May 30, 2005. Counsel contends that there is no requirement that the petitioner and the abusing spouse reside together for any particular length of time. Counsel also asserts that the record clearly shows that the petitioner

entered into the marriage in good faith and references the petitioner's previously submitted statements and affidavits submitted on the petitioner's behalf to support his assertion.

In the AAO's prior decision of October 25, 2006, incorporated here by reference, the AAO fully discussed the pertinent facts and relevant evidence submitted, including the petitioner's personal statements and affidavits submitted on his behalf. As the AAO previously determined, the petitioner's legal marriage to a USC is insufficient to establish that the petitioner entered into his marriage in good faith. The AAO found that the record did not provide sufficient documentation that the petitioner intended to create a life with his spouse at the time of their marriage and that he entered into marriage with his spouse in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Counsel's assertions on certification do not overcome that determination. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Similarly, counsel's assertion that the petitioner and his USC spouse resided together, albeit for a short time, is not supported in the record. Counsel has not submitted new evidence to establish this fact and has not attempted to resolve the inconsistencies in the record previously noted by the AAO. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

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 June 4, 2007 decision is affirmed. The petition is denied.