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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 04 231 51060

Office: VERMONT SERVICE CENTER

Date:

MAR 19 2009

IN RE:

Petitioner:

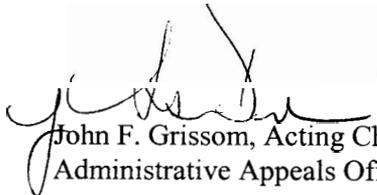
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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.


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 and the petition will be denied.

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, 8 U.S.C. § 1154(a)(1)(J) 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. In this case, the director initially denied the petition on December 21, 2005, finding that the petitioner had been divorced from his spouse for more than two years at the time of filing and thus did not have a qualifying relationship within two years of the filing of the petition. The director also found that the petitioner had failed to establish that he resided with his spouse, that he was battered by or subjected to extreme cruelty by his spouse, and that he entered into the marriage in good faith. In the AAO's September 21, 2006 decision on appeal, the AAO concurred with the director's determination that the petitioner did not have a qualifying relationship as the spouse or former spouse of a U.S. citizen. The AAO also found that the record did not contain evidence to establish that the petitioner resided with his spouse, that he was battered by or subjected to extreme cruelty by his spouse, and that he entered into his marriage in good faith. However, the AAO remanded the petition for issuance of a Notice of Intent to Deny (NOID), as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹ Upon

¹ On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

remand, the director issued a NOID on November 22, 2006, which informed the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish the requisite qualifying relationship, joint residency, battery or extreme cruelty, and good-faith entry into the marriage. The petitioner timely responded to the NOID and the director denied the petition on January 11, 2008, finding that the petitioner's additional evidence, which included another copy of his marriage certificate, a personal statement, proof of his good moral character, and his university diploma and other professional business associations, failed to overcome the four aforementioned grounds for denial. The director certified his decision to the AAO for review 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, no further submission has been received. Accordingly, the record is considered to be complete as it now stands.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. As discussed above, the petitioner's additional evidence submitted since the issuance of that decision failed to overcome the four aforementioned grounds for denial. 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 reasons stated above, 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 April 4, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The director's decision of January 11, 2008 is affirmed. The petition is denied.