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



U.S. Citizenship
and Immigration
Services

B9

FILE:

Office: VERMONT SERVICE CENTER

Date: DEC 22 2010

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:

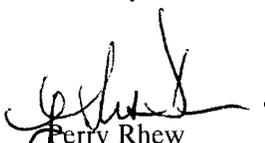
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office 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].

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 in this matter initially issued a Request for Further Evidence (RFE) on May 31, 2007 notifying the petitioner of the deficiencies in the record and affording the petitioner the opportunity to provide additional evidence. The director noted that the petitioner had not provided sufficient evidence of the shared residence with the claimed abuser from 2001 to 2005, the years the petitioner claimed she had resided with the claimed abuser. The director also noted that the petitioner's spouse had filed a Form I-130 on her behalf that had been denied based on numerous discrepancies in the petitioner's testimony and that of her husband, demonstrating that the petitioner and her spouse had not entered into a *bona fide* marriage. The director further noted that the petitioner had not submitted evidence that the marital difficulties claimed by the petitioner were beyond those difficulties encountered in many marriages. Upon review of the evidence submitted in response to the RFE and upon the totality of the record, the director denied the petition on October 5, 2007. The director found that the petitioner had not submitted any additional evidence establishing that: she had resided with her United States citizen spouse; she had been subjected to battery or extreme cruelty perpetrated by her husband during the qualifying relationship; and she had entered into the qualifying relationship in good faith.

The AAO concurred with the director's determination on April 1, 2009, but remanded the petition

for issuance of a Notice of Intent to Deny (NOID) the petition, as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹ Upon remand, the director issued a NOID on February 23, 2010, which informed the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish the requisite residence, abuse, and good faith intent in entering into the marriage. The petitioner failed to respond to the NOID and the director denied the petition on August 26, 2010, determining that the petitioner failed to establish that she resided with her spouse, that she entered into the qualifying marriage in good faith, and that she was battered or subjected to extreme cruelty during her marriage. The director certified his decision to the AAO for review and notified the petitioner that she could submit a brief and/or evidence to the AAO within 30 days of service of the director's decision.

In response to certification, the petitioner submits:

- A June 11, 2007 copy of a summary of [REDACTED] for the time period between May 25, 2005 and May 24, 2007, addressed to the petitioner and her husband that had been previously submitted;
- A copy of a December 6, 2007 summary of [REDACTED] for the time period between January 27, 2003 and December 27, 2004 addressed to the petitioner and her husband;
- An undated affidavit signed by [REDACTED] that corresponds verbatim to a previously submitted affidavit signed by [REDACTED];
- A September 16, 2010 affidavit signed by [REDACTED] on September 17, 2010 that corresponds verbatim to a previously submitted affidavit signed by [REDACTED] and his wife; and,
- An Order of the Civil Court of the City of New York in an action filed against the petitioner and her husband that was filed January 9, 2003, dismissing the action filed against the petitioner and ordering the release of her bank account.

On certification, the petitioner asks that the above documentation be considered evidence that she shared a *bona fide* relationship with her husband. The petitioner states that she and her husband had a joint bank account that they had to go to Court to settle. The petitioner references the affidavits submitted as from people who knew the couple.

The affidavits submitted on appeal and the June 11, 2007 summary of [REDACTED] have previously been reviewed and found insufficient to establish that the petitioner resided with her spouse, that she entered into the marriage in good faith, and that she had been subjected to battery or extreme cruelty perpetrated by her husband. The additional summary of [REDACTED] although addressed to the petitioner and her spouse and for service during the time period the petitioner claimed to have resided with her spouse, does not establish that the couple jointly resided at the address listed

¹ On April 17, 2007, Citizenship and Immigration Services (CIS) 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.

on the summary. The record shows that when reviewed together, the summaries of service are for periods of time from January 27, 2003 to December 27, 2004 and from May 25, 2005 to May 24, 2007. As previously noted, the petitioner claimed that she resided with her spouse from October 2001 to February 2005. The petitioner does not explain why her husband would still be on an account subsequent to the date she claims the couple resided together. Moreover, the affidavits submitted indicate that the petitioner was put out of the matrimonial home by her husband and she does not explain why she would still be on an account where she did not reside. The only other document presented for the first time on certification is the Order of the Civil Court of the City of New York dismissing an action filed against the petitioner. The handwritten order lists both the petitioner and her spouse as the defendants in the action and releases only the petitioner's bank account. However, this information is again insufficient to establish that the couple resided together, that the petitioner entered into the marriage in good faith, and that she was subjected to battery or extreme cruelty perpetrated by her spouse.

Upon review of the totality of the record, including the new information submitted on certification, the record does not establish that the petitioner resided with her spouse, that she entered into the marriage in good faith, and that she was subjected to battery or extreme cruelty perpetrated by her spouse. The relevant evidence submitted has been discussed in the previous decisions of the director and the AAO and such discussion is incorporated here by reference. The petitioner has not submitted further probative evidence; consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her 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 August 26, 2010 decision of the director is affirmed and the petition is denied.

ORDER: The director's August 26, 2010 decision is affirmed. The petition is denied.