

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

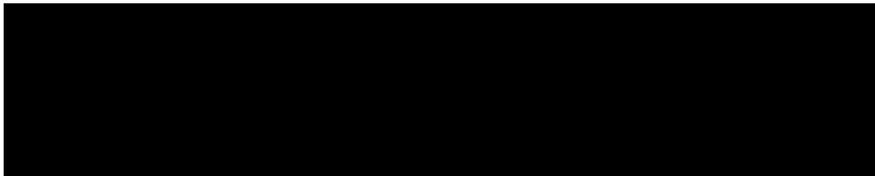
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

BA



FILE:



Office: VERMONT SERVICE CENTER

DEC 04 2007
Date:

EAC 04 047 52443

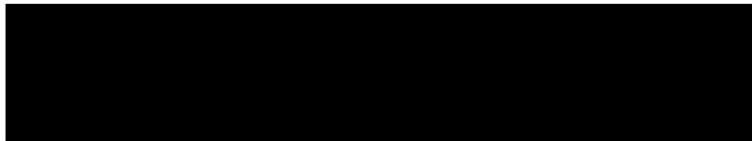
IN RE:

Petitioner:



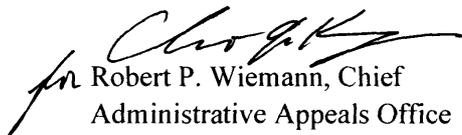
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


for 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 January 10, 2007 decision of the director will be affirmed and the petition will be denied.

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].

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 August 15, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his citizen spouse during their marriage and that he entered into his marriage in good faith. On appeal, the AAO concurred with the findings of the director regarding the petitioner's failure to establish his claim of abuse and that he entered into his marriage in good faith. In addition, the AAO found that the petitioner failed to establish that he had a qualifying marriage as the spouse of a United States citizen because in previous correspondence with the Service the petitioner indicated that he was divorced from his spouse. However, the AAO remanded the case because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Upon remand, the director issued a NOID on June 26, 2006, addressing the petitioner's failure to establish his claims of battery or extreme cruelty and of a good faith marriage. The director did not, however, discuss the petitioner's failure to establish a qualifying relationship or request further evidence to establish his marital status. The petitioner, through counsel, timely responded to the director's NOID with additional evidence. On January 10, 2007, after addressing the additional evidence received into the record, the director found that the petitioner had sufficiently established that he was battered or subjected to extreme cruelty. However, the director found that the petitioner failed to establish that he entered into his marriage in good faith. The director's discussion will not be repeated here. The director certified her decision to the AAO for review and notified the petitioner, through counsel, that he could submit a brief to the AAO within 30 days of service of the director's decision. No further evidence has been submitted. Accordingly, the record is considered to be complete as it now stands.

The AAO's prior decision of April 12, 2006 is incorporated here by reference. Accordingly, with the exception of one affidavit submitted on the petitioner's behalf, our review focuses on the evidence of a good faith marriage that was submitted subsequent to the AAO's remand and the director's NOID. That evidence consists of three affidavits from the petitioner's friends. The affidavits, however, are general in nature and provide no discussion of the petitioner's relationship with his spouse other than as it relates to the abuse. The affidavits generally describe occasions spent with the petitioner and his spouse or acknowledge that they resided together but do not offer any probative details regarding the petitioner's interactions with his spouse that would add evidentiary value to the petitioner's claim of a good faith marriage. The remaining affidavit that we will consider is an affidavit from [REDACTED] a friend of the petitioner. Although it appears that the affidavit was submitted by the petitioner on appeal, it was not considered at that time. However, like the affidavits submitted in response to the director's NOID, [REDACTED] affidavit lacks probative details regarding the petitioner's relationship with his spouse. Instead, [REDACTED] makes the following general statements:

I know for a fact that [the petitioner] married [his spouse] . . . I have knowledge that this couple was in love because we got together many times and finally one day I heard that they wanted to get married.

I saw this happy couple start a new life together, I lost my friend because he was not able to get together with his old friends.

In response to the NOID, counsel stated that the petitioner "claimed . . . that he was not able to send you more official documents . . . because his wife destroyed or took everything from their home." Contrary to counsel's claims, however, the record does not contain any statement from the petitioner alleging that the reason he lacks documentary evidence of his good faith marriage is because his wife either took or destroyed his documents. 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 Obaigbena*, 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). We note that while the lack of documentary evidence is not necessarily disqualifying, as discussed above, the testimonial evidence submitted by the petitioner and on his behalf lacks probative detail and thus does not carry sufficient weight to establish his claim of a good faith marriage.

Beyond the decision of the director, we find that the unresolved issue regarding the petitioner's marital status is further grounds for denial of the petition. While we acknowledge that the director did not address this issue in his NOID, we find that the Service provided the petitioner with adequate notice of this deficiency in the AAO's remand decision.

Accordingly, we concur with the findings of the director that the petitioner has not established that he entered into his marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. We further find that the petitioner has failed to establish that he had a qualifying relationship as the spouse of a United States citizen as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See*

Spencer Enterprises, Inc. v. United States, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 January 10, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The January 10, 2007 decision of the director is affirmed.