

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9

FILE:

EAC 06 005 50756

Office: VERMONT SERVICE CENTER

Date:

DEC 03 2008

IN RE:

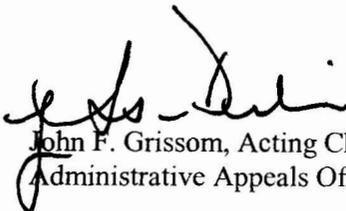
Petitioner:

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.


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 4, 2006, for the petitioner's failure to establish that he had a qualifying relationship with a U.S. citizen and that he was a person of good moral character. In its August 14, 2006 decision on appeal, the AAO concurred with the director's determinations on the issues of the failure to establish a qualifying relationship and good moral character. The AAO also determined that the record failed to establish that D-V-,¹ the petitioner's former spouse, battered or subjected the petitioner to the requisite battery or extreme cruelty during the marriage and that the petitioner was eligible for immediate relative classification based on his relationship to D-V-. The AAO remanded the petition, however, for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on September 21, 2006, which informed the petitioner, through counsel, that he had failed to establish: a qualifying relationship with a lawful permanent resident of the United States; that he is eligible for immigration classification under section 201(b)(2)(A)(i) or section 203(a)(2)(A) of the Act; that he had established the requisite battery or extreme cruelty; and that he is a person of good moral character.

In response to the NOID, the petitioner submitted his affidavit dated November 21, 2006; clearances from the City of Montebello and the Superior Court of Los Angeles, and transcripts of a hearing held on April 22, 2003 relating to the termination of the petitioner's marriage.

¹ Name withheld to protect the individual's identity.

Upon review of the newly submitted evidence, the director determined that the petitioner's marriage had been legally terminated in divorce on August 8, 2003 more than two years prior to the filing of the Form I-360 on October 3, 2005; thus the petitioner did not qualify as a former spouse of a United States citizen when he filed the petition. The director also determined that the petitioner did not qualify for immigration classification under section 201(b)(2)(A)(i) or section 203(a)(2)(A) of the Act. The director noted the petitioner's statements provided in his November 21, 2006 affidavit regarding his devastation that his former spouse would not allow him access to her child² and of his former spouse's infidelity and alleged lies regarding her relationship with another man. The director found, however, that the petitioner's former spouse had no legal obligation to provide the petitioner access to her child and that infidelity did not constitute abuse for the purposes of the Form I-360 petition. The director further determined that the clearance from the City of Montebello did not indicate a fingerprint analysis was done and the clearance did not include evidence that the investigating agency had searched its records under both of the petitioner's surnames. The director found the clearance from the Superior Court of Los Angeles sufficient as the clearance was based on a fingerprint analysis. The director denied the petition for these reasons and certified his decision to the AAO for review.

In our prior decision, incorporated here by reference, we fully discussed the pertinent facts and relevant evidence in the record when the August 14, 2006 decision was rendered. The director has sufficiently addressed the evidence submitted after that decision was issued. The AAO notes that the petitioner has not provided additional evidence on certification. The petitioner has not established: a qualifying relationship as the former spouse of a United States citizen; he is eligible for immigration classification under section 201(b)(2)(A)(i) or section 203(a)(2)(A) of the Act; he was the victim of battery or extreme cruelty perpetrated by the United States citizen during the qualifying relationship; and he is a person of good moral character in all the jurisdictions he has lived the last three years.

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 January 29, 2007 decision is affirmed. The petition is denied.

² The petitioner is not the biological father of his former spouse's child but had enjoyed a relationship with the child during the marriage.