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



U.S. Citizenship and Immigration Services

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FILE:



Office: VERMONT SERVICE CENTER  
EAC 07 072 50454

Date:

APR 01 2009

IN RE: Petitioner:



PETITION:

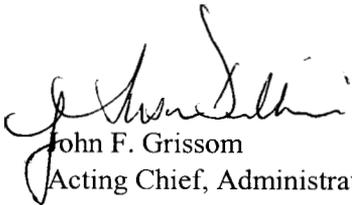
Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

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).

The director denied the petition determining that the petitioner had not established a qualifying relationship with a United States citizen and had not established his eligibility for immigrant classification pursuant to section 201(B)(2)(A)(i) of the Act based on a qualifying relationship with a United States citizen. The director found that the marriage between the petitioner and the claimed abuser terminated on July 7, 2004 and the petition in this matter was not filed until January 12, 2007, more than two years after the marriage terminated. The director also noted that the petitioner had not provided sufficient evidence to establish that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse and had not established that he had entered into the qualifying relationship in good faith.

The AAO concurs with the director's determination, nonetheless, this matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Counsel for the petitioner initially submitted a late-filed Form I-290B, Notice of Appeal. The director treated the late-filed appeal as a motion. Upon review of the document issued in support of the late-filed appeal and the complete record, the director again denied the petition finding that the petitioner had not provided evidence sufficient to overcome the denial decision. Counsel timely filed a Form I-290B on February 14, 2008. Counsel's statement on the Form I-290B reads:

The petitioner respectfully disagrees with the decision rendered in that it is against the weight of the law and evidence submitted.

Due to previous scheduled legal engagements and a necessary health vacation, counsel respectfully requests permission to submit his brief on or before April 7, 2008.

The record includes a letter dated April 10, 2008 wherein counsel requested a second extension until April 30, 2008 citing a break in of his car on March 11, 2008 and an indication that he had torn a tendon and needed to be on crutches. The record does not contain further information or evidence submitted on appeal. Counsel does not provide evidence or argument in support of his assertion that the decision rendered is against the weight of the law and evidence submitted. Without documentary evidence or argument 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). The AAO is without further evidence or argument to evaluate regarding the petitioner's failure to establish essential elements of eligibility for this benefit.

Despite the petitioner's prima facie ineligibility based on the record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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.

**ORDER:** The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.