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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

B9



FILE:

Office: VERMONT SERVICE CENTER

Date:

APR 01 2009

EAC 07 006 50188

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. The matter is now before the Administration 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 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 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; that she had been subjected to battery or extreme cruelty perpetrated by her husband during the qualifying relationship; and that she entered into the qualifying relationship in good faith.

The AAO finds that the director considered the petitioner's statement and the affidavits submitted on her behalf and that the petitioner did not provide any new evidence or argument on appeal substantiating that her husband manipulated or subjected her to battery or extreme cruelty. 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). Upon remand, the director must issue a NOID on the issues of residence, abuse, and good faith entry into the marriage.

The petitioner timely submits a Form I-290B, Notice of Appeal. On the Form I-290B, the petitioner asserts that United States Citizenship and Immigration Services (USCIS) failed to consider the

manipulation and tactics used by her husband to abuse her. In addition, the petitioner submits documents previously submitted and specifically reviewed by the director. The petitioner notes the documents submitted and requests favorable consideration of her case.

Although the petitioner does not submit any new evidence or argument regarding her failure to establish that she had resided with her United States citizen spouse; that she had been subjected to battery or extreme cruelty perpetrated by her husband during the qualifying relationship; and that she entered into the marriage in good faith, 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.