

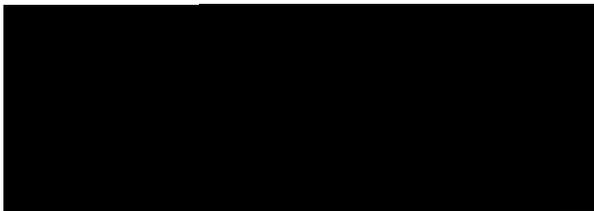
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

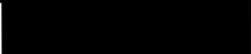


U.S. Citizenship
and Immigration
Services



B5

FILE:



Office: VERMONT SERVICE CENTER

Date:

APR 03 200

EAC 07 230 50902

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

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 appeal will be summarily dismissed. The petition will be denied.

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 on August 28, 2008. The director found that the petitioner had not established a qualifying relationship as the spouse of a United States citizen and had not established her eligibility for immigration classification under section 201(b)(2)(A)(i) of the Act based on a qualifying relationship with a United States citizen. The director specifically observed that the petitioner’s divorce from her first husband did not become final until it was registered on October 22, 2003. As the petitioner married the claimed United States citizen abuser on October 25, 2002, prior to the legal termination of her previous marriage, the director found that there was no qualifying relationship. The director also noted counsel’s response to this observation wherein counsel asserted that all matrimonial ties between the petitioner and her first husband were dissolved as of October 8, 2002. The director noted, however, that counsel did not submit a complete translation of the divorce document and that there was no evidence that the divorce document had been registered with a civil authority.

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal. Counsel’s statement on the Form I-290B reads:

The decision of the Director, Vermont Service Center, is factually incorrect-the Applicant’s divorce to her first husband [name withheld to protect the individual’s identity], became final as of October 8, 2002. As of that date, the civil registry in Mexico declared that the Applicant [name withheld to protect the individual’s identity] was free to remarry, and married United States Citizen [name withheld to protect the individual’s identity] on October 25, 2002.

The Applicant through counsel will submit a brief and additional evidence within 30 days.

On February 10, 2009, the AAO sent a facsimile to counsel requesting a copy of a previously filed brief

or any additional evidence that had been timely submitted in support of the appeal to be resent to the AAO within five business days. The AAO specifically noted that the facsimile is not and should not be construed as requesting or permitting the petitioner and/or counsel to submit a late brief or evidence. On March 16, 2009, the AAO received counsel's request for an extension of time. The AAO responded on March 23, 2009 denying any extension as the brief filing deadline had passed and no extensions would be given. As the record does not contain further information or evidence on appeal, the record is considered complete.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

Counsel does not provide evidence in support of his assertion. Moreover, counsel did not provide the applicable Mexican laws and regulations governing the finality of a divorce granted in Mexico. 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). Thus, the record does not include further evidence to evaluate regarding the claimed inaccuracy of the director's decision. The AAO is without further evidence or argument to evaluate regarding the petitioner's failure to establish essential elements of eligibility for this benefit. The petitioner's failure to specifically address the director's findings and present evidence and argument identifying and substantiating the director's erroneous conclusions of law or statements of fact mandate the summary dismissal of the appeal.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

The petition will be denied for the stated reasons set out in the director's decision, 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.

ORDER: The appeal is summarily dismissed.