



U.S. Citizenship
and Immigration
Services

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APR 03 2009

[Redacted]

FILE:

EAC 06 231 50848

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:

[Redacted]

PETITION:

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

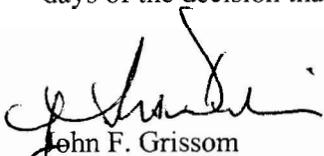
ON BEHALF OF PETITIONER:

[Redacted]

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 Administration 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)(B)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident 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 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

On September 5, 2007, the director issued a Notice of Intent to Deny (NOID) the petition informing the petitioner that the record did not include sufficient evidence to establish that she had resided with F-M-¹, that she had been subjected to battery or extreme cruelty perpetrated by F-M-, and that she had entered into the marriage in good faith. The director denied the petition on December 13, 2007, determining that the petitioner had not submitted any probative evidence overcoming the deficiencies set out in the NOID.

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 for the petitioner timely submits a Form I-290B, Notice of Appeal. Counsel submits an additional affidavit signed on January 10, 2008 by [REDACTED] who declares: that she has known the petitioner since 1991; that she knows the petitioner married F-M- in October 1991; that she “later discovered that he had been abusing her;” that when the petitioner moved out of the home, the husband kept all the documents and paperwork from the marriage; that the paperwork, pictures, and documents are in the custody of his mother and the petitioner is not welcome to come over; and that “their relationship is very hostile.” The affiant attests: that they were married, and that separation ensued as a result of abuse and violence.

Counsel asserts that any documents that would establish the necessary elements would be in the possession of the petitioner’s mother-in-law who has refused to cooperate with the petitioner. The record does not include any additional evidence on appeal to establish that the petitioner resided with the lawful permanent resident, that she was subjected to battery or extreme cruelty perpetrated by F-M-,

¹ Name withheld to protect the individual’s identity.

and that she entered into the marriage in good faith.

Of note, the AAO finds that the record includes a marriage certificate; a photocopy of one photograph; a police report dated December 1, 1998 indicating that F-M- attempted suicide; the petitioner's personal statement indicating her husband (who is in a wheelchair) subjected her to verbal abuse, slapped her and tore her blouse off one time, and that he wanted her to give him \$1,000 for her citizenship papers; the petitioner's police clearance; and the petitioner's statement that she could not obtain further evidence. The record does not include any probative evidence of joint residence, of battery or extreme cruelty suffered by the petitioner, or good faith entry into marriage. The record lacks: any detailed statements or affidavits; any medical or police reports or court documents indicating that the petitioner was subjected to battery or extreme cruelty; or any information that would explain the circumstances and interactions of the petitioner and F-M-.

The AAO does not find counsel's assertion that any documents that would establish the necessary elements for this benefit would be in the possession of the petitioner's mother-in-law, persuasive. Counsel has failed to submit any credible account of the petitioner's relationship with F-M- and has not submitted any independent evidence, such as medical, police, and court documentation that would assist in establishing the petitioner's claim. The affidavit submitted on appeal does not include any probative statement that addresses any of the essential requirements to establish eligibility for this benefit. As observed above, the record includes only general statements and lacks probative, relevant evidence. Counsel in this matter does not identify specifically any erroneous conclusions of law or statements of fact made by the director as a basis for the appeal. The AAO is without further evidence or argument to evaluate regarding the petitioner's failure to establish essential elements of eligibility for this benefit. Counsel's failure to specifically address the director's findings and present evidence and argument identifying 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.