



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

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[Redacted]

FILE:

Office: VERMONT SERVICE CENTER

Date:

APR 06 2009

EAC 06 254 50292

IN RE: Petitioner:

[Redacted]

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:

[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 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 issued a Notice of Intent to Deny (NOID) the petition on May 29, 2007 notifying the petitioner of the deficiencies in the record and affording the petitioner the opportunity to provide evidence to establish: that he had a qualifying relationship with the United States citizen and eligibility for immigrant classification under the statute; that he shared a common residence with his United States citizen spouse; that he had been subjected to battery or extreme cruelty perpetrated by his spouse during the qualifying relationship; and that he entered into the qualifying relationship in good faith.

Upon review of the evidence submitted in response to the NOID, the director denied the petition on September 21, 2007. The director detailed the deficiencies in the record and determined that the information submitted in response to the NOID did not overcome the deficiencies.

The petitioner timely submits a Form I-290B, Notice of Appeal, a brief, and five additional affidavits.

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.”

The director noted that the marriage of the petitioner and M-P-¹ was terminated on June 28, 2005 and the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on September 8, 2006. The director properly found that an individual applying for the benefits of section 204(a)(1)(A)(iii) of the Act must file the petition while currently married to the abusive spouse or if divorced within two years of filing the petition, the legal termination of the marriage was due to or connected with the abuse suffered by the petitioner during the marriage. In this matter, the divorce was granted due to the constructive abandonment of the petitioner on June 1, 1999. The divorce was not

¹ Name withheld to protect the individual’s identity.

granted due to the abuse of the petitioner's spouse. Thus, the petitioner has not established a qualifying relationship that forms the basis for eligibility for this benefit. Similarly, the petitioner has not established that he is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act. The record on appeal contains no evidence or argument addressing this essential element of eligibility for this benefit.

The director also found that the petitioner had not established that he resided with M-P-. The director noted that the divorce decree terminating the petitioner's marriage entered into on January 13, 1997 was based on constructive abandonment, refusal to engage in sexual relations, commencing on June 1, 1999. The director also noted that the petitioner despite the constructive abandonment continued to file joint Internal Revenue Service (IRS) Forms 1040, listing addresses other than those addresses listed on the petitioner's spouse's IRS Forms W-2. The director requested a copy of a joint lease to clarify the discrepancies and none was provided.

On appeal, counsel for the petitioner asserts that not having sexual relations does not mean that the couple did not live together and asserts that the jointly filed IRS Forms demonstrate a common residence. The AAO notes that counsel does not address the different address the petitioner's spouse listed on her IRS Form W-2. In addition, the AAO observes that the affidavits submitted on the petitioner's behalf list a residence on [REDACTED] or [REDACTED], an address different than listed on the jointly filed IRS Forms and different than the petitioner's spouse's Forms W-2. The AAO determines that the record on appeal does not include evidence resolving the inconsistencies regarding the couple's claimed joint residence. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record on appeal does not include evidence or argument demonstrating that the petitioner and M-P- resided together as required under the Act.

The director further found that the petitioner had not established that he had suffered battery or extreme cruelty perpetrated by his wife. The director noted the five affidavits submitted on behalf of the petitioner to show that he had suffered abuse during the marriage. The director properly found that the affidavits contained generalities and did not delineate specific instances of abuse and thus did not establish that the petitioner suffered battery or extreme cruelty perpetrated by the petitioner's wife.

On appeal counsel for the petitioner asserts that the petitioner suffered psychological abuse. The AAO finds that although the affidavits submitted on appeal contain more information regarding the alleged abuse of the petitioner, the record does not contain evidence substantiating the incidents described, the psychological harm the petitioner counsel claims that the petitioner suffered, and the necessary detail to assist the AAO in ascertaining the veracity of the affidavits. Moreover, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the

time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). Further, 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 Obaighena*, 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 record includes no substantive evidence or argument on appeal demonstrating that the petitioner suffered battery or extreme cruelty perpetrated by the petitioner's wife.

The director also found that the petitioner had not established that he entered into the qualifying relationship in good faith. The director detailed the deficiencies in the limited evidence submitted and found that the petitioner had not provided evidence supporting his claim that he entered into the marriage in good faith. On appeal, counsel for the petitioner asserts that the petitioner married in good faith and submits divorce decrees terminating each of the petitioner's three marriages, copies of the approval notice issued by United States Citizenship and Immigration Services (USCIS) dated February 1, 2001 for the Form I-130 filed by the petitioner's spouse, and copies of the petitioner's spouse's Affidavit of Support. The AAO observes that the documents submitted do not provide any information regarding the petitioner's intent upon entering the marriage. The record on appeal includes no evidence or argument demonstrating that the petitioner established that he entered into the marriage in good faith.

The record on appeal 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. The petitioner'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.