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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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[Redacted]

FILE: [Redacted]
EAC 04 198 52338

Office: VERMONT SERVICE CENTER

Date: **AUG 04 2009**

IN RE: [Redacted]

PETITION: Petition for Special 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)

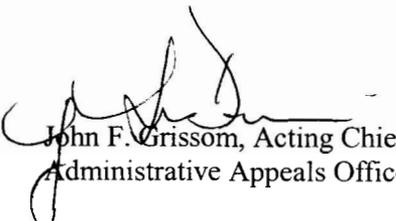
ON BEHALF OF PETITIONER:

[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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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.

The petitioner filed the instant Form I-360 on June 21, 2004. The director denied the petition on August 2, 2005, on the basis of his determination that the petitioner had failed to establish that he shared a joint residence with J-R-,¹ his United States citizen wife; that he was subjected to battery and/or extreme cruelty by J-R-; that he is a person of good moral character; and that he entered into marriage with J-R- in good faith. The petitioner appealed the director's decision to the AAO. In its February 12, 2007 decision, the AAO agreed with the director's analysis, and found further that section 204(g) of the Immigration and Nationality Act, 8 U.S.C. § 1154(g) further barred approval of the petition. However, although the AAO agreed with the director's reasoning, it remanded the petition to the director, on technical grounds, for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).²

The director issued the requisite NOID on May 21, 2007. Counsel and petitioner, however, elected not to respond to the NOID. Accordingly, the director denied the petition March 4, 2008, and certified his decision to the AAO for review. In his denial, the director found, again, that the petitioner had failed to establish that he shared a joint residence with J-R-; that he was subjected to battery and/or extreme cruelty by J-R-; that he is a person of good moral character; that he entered into marriage with J-R- in good faith; and that section 204(g) of the Act does not bar approval of the petition. Neither counsel nor the petitioner submitted any information to rebut the findings of the director's March 4, 2008 notice of certification.

Although counsel and the petitioner elected not to respond to either the NOID or the notice of certification, the AAO notes nonetheless that the record does contain several documents that have never been addressed by the director or the AAO.³ As the AAO found the evidence of record insufficient to establish the petitioner's eligibility in its February 12, 2007 decision, on certification

¹ Name withheld to protect individual's identity.

² On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing of this petition on June 21, 2004.

³ After the director denied this petition on August 2, 2005, the petitioner filed a second Form I-360 on September 26, 2005. *See* EAC 05 259 51239. The director issued a NOID regarding that petition on May 16, 2007. The evidence now contained in the record of proceeding that was not before the AAO when it issued its February 12, 2007 decision was submitted by the petitioner in response to the director's May 16, 2007 NOID regarding EAC 05 259 51239.

the AAO need only consider the evidence submitted by the petitioner after its issuance of that decision, as the issues before the AAO are the same issues that were before it when it issued that February 12, 2007 decision. The following evidence has been submitted into the record since the AAO's February 12, 2007 decision:

- An invoice for installation of DirecTV at the alleged joint residence of the petitioner and J-R-, dated September 29, 2003;
- Copies of what appear to be tax returns;
A copy and translation of an April 26, 2004 order dismissing the petitioner's request for a protective order against J-R-;
- The petitioner's June 27, 2007 self-affidavit; and
- Counsel's July 2, 2007 letter.

Upon review, the AAO agrees with the director's determination that the petitioner has failed to establish that he shared a joint residence with J-R-; that he was subjected to battery and/or extreme cruelty by J-R-; that he is a person of good moral character; that he entered into marriage with J-R- in good faith; and that section 204(g) of the Act does not bar approval of the petition. In its February 12, 2007 decision, the AAO agreed with the analysis of the director's earlier August 2, 2005 decision. The contents of the AAO's decision, as well as the evidence of record upon which the AAO based its decision, are part of the record and their contents need not be repeated. The DirecTV installation invoice is insufficient to establish that the petitioner shared a joint residence with J-R-. This single document is insufficient to establish that the petitioner and J-R- shared a joint residence between 1997 and 2004, particularly in light of the AAO's specific reference to a 2003 investigation conducted by USCIS which indicated that J-R- and the petitioner were not sharing a joint residence. The AAO notes that neither counsel nor the petitioner has addressed the findings of that investigation. Nor does this document establish that the petitioner entered into the marriage in good faith, as it does not speak to the petitioner's intentions prior to entering into the marriage.

While the petitioner submits copies of what appear to be tax returns, the AAO will not consider those documents, as they are not accompanied by certified English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The copy and translation of the judge's April 26, 2004 order dismissing the petitioner's request for a protective order against J-R- does not establish that she subjected the petitioner to battery or extreme cruelty. Given the judge's finding that "[t]he court determined that there is not a justified cause to issue a protection order," this document does not strengthen the petitioner's case.

Nor does the petitioner's June 27, 2007 self-affidavit overcome any of the concerns of the director or the AAO, as he fails to describe specific incidents of abuse in detail, and his testimony is

generalized. Such lack of any specific information, such as dates, undermines the value of his testimony. The petitioner submits several sentences of testimony that make vague references to the alleged abuse, and he fails to address the specific issues raised in the AAO's February 12, 2007 decision. Counsel's July 2, 2007 letter also fails to address the specific raised in the AAO's February 12, 2007 decision.

Upon review, the AAO affirms the decision to deny this petition. As discussed above, the new evidence of record fails to overcome the previous decisions of the director and the AAO to deny the petition, and counsel and the petitioner have elected not to address the AAO's reference to the USCIS investigation into whether the petitioner and J-R- shared a joint residence or the AAO's enumerated concerns with regard to whether the petitioner entered into the marriage in good faith.

Counsel and the petitioner have failed to overcome the findings of the AAO and the director that the petitioner has failed to establish he shared a joint residence with J-R-; that he was subjected to battery and/or extreme cruelty by J-R-; that he is a person of good moral character; that he entered into marriage with J-R- in good faith; and that section 204(g) of the Act does not bar approval of the petition. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and his petition must be denied. The director's decision will be affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's March 4, 2008 decision is affirmed. The petition is denied.