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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 05 136 53581

Office: VERMONT SERVICE CENTER

Date:

JAN 22 2009

IN RE:

Petitioner: [REDACTED]

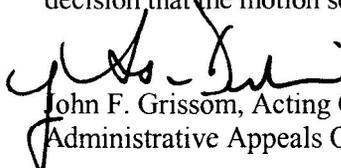
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and 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).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. In this case, the director initially denied the petition on December 27, 2005, finding that the petitioner failed to establish that he had been

battered or subjected to extreme cruelty by his spouse during their marriage and, therefore, that the petitioner failed to establish his eligibility for immigrant classification. In the AAO's August 14, 2006 decision on appeal, the AAO concurred with the director's determination and specifically found that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage. However, the AAO remanded the petition for issuance of a Notice of Intent to Deny (NOID), as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹ Upon remand, the director issued a NOID on September 13, 2006, which informed the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish the requisite abuse. The petitioner responded to the NOID and the director denied the petition on January 4, 2007, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty during his marriage. The director certified his decision to the AAO for review and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision.

On certification, the petitioner, through his attorney, submits the following: a copy of an "acknowledgement of service" indicating that the petitioner's spouse does not desire to contest the petitioner's "complaint for divorce"; a certificate and corresponding transcript of the petitioner's completion of an online course entitled "Domestic Violence: A Time for Change" with an estimated 38.4 contact hours; and an affidavit from the petitioner. Counsel also cites to a circuit court decision, [REDACTED], (3d Cir. Sept. 19, 2006), stating that the director focused on alleged discrepancies instead of focusing on the petitioner's situation in its totality. Counsel also lists the entire New Jersey statute concerning grounds of divorce, stating that the petitioner could not have obtained a divorce without proper service.

Upon review, we concur with the director's determination. The record contains a copy of the petitioner's final judgment of divorce from the Superior Court of New Jersey, based on extreme cruelty. We disagree with counsel's contention that "the New Jersey statute concerning extreme cruelty divorces mirrors the language in 8 C.F.R. § 204.2(c)(1)(vi) that defines extreme cruelty and battery with respect to immigration self-petitions."

A review of N.J.S. 2A: 34-2. finds that grounds of divorce include:

- c. Extreme cruelty, which is defined as including any physical or mental cruelty which endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant; provided that no complaint for divorce shall be filed until after 3 months from the date of the last act of cruelty complained of in the complaint, but this provision shall not be held to apply to any counterclaim.

¹ 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 and adjudication of this petition.

The definition of “extreme cruelty” in the New Jersey Statute at N.J.S. 2A: 34-2.c., pertaining to grounds of divorce, is general in nature. Moreover, this statute is not binding on USCIS. Therefore, USCIS is not bound to find that the petitioner is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act simply because he has a final judgment of divorce from the Superior Court of New Jersey, based on extreme cruelty.

Counsel also cites to a circuit court decision, [REDACTED], (3d Cir. Sept. 19, 2006), stating that the director focused on alleged discrepancies instead of focusing on the petitioner’s situation in its totality. Counsel, however, does not include a copy of that decision. Nor does he provide a list of the inconsistencies that he maintains are irrelevant. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). 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).

We acknowledge the petitioner’s completion of the online course entitled “Domestic Violence: A Time for Change.” As stated in our August 14, 2006 decision, however, the evidence of record does not establish that the behavior of the petitioner’s wife rose to the level of battery or extreme cruelty, as described in C.F.R. § 204.2(c)(1)(vi). Nor does the record indicate that the petitioner’s wife ever assaulted him or threatened him with violence, or that her behavior constituted psychological or sexual abuse or exploitation, or was part of an overall pattern of violence.

The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has submitted no further evidence that overcomes the deficiencies of his case. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the January 4, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The director’s decision of January 4, 2007 is affirmed. The petition is denied.