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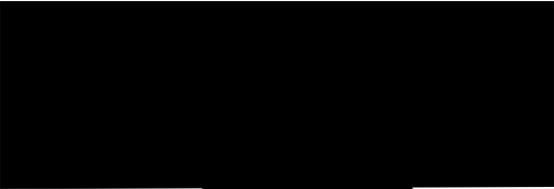
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
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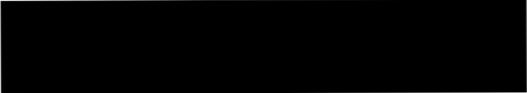
EAC 05 086 52098

Office: VERMONT SERVICE CENTER

Date: JAN 23 2009

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)

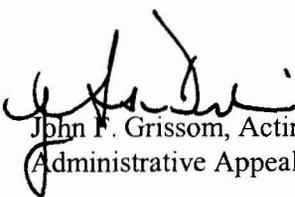
ON BEHALF OF PETITIONER:



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. 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].

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 August 16, 2005, finding that the petitioner failed to establish that her U.S. citizen husband battered or subjected her to extreme cruelty during their marriage and, therefore, that the petitioner failed to establish her eligibility for immigrant classification. In the AAO's August 11, 2006 decision on appeal, the AAO concurred with the director's determination and specifically found that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her 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 October 6, 2006, which informed the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish the requisite abuse. The petitioner, through counsel, timely responded to the NOID with additional evidence. The director denied the petition on March 22, 2007, finding that the petitioner failed to establish that she was

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.

battered or subjected to extreme cruelty during her marriage. The director certified his decision to the AAO for review.

In our prior decision, incorporated here by reference, we fully discussed the pertinent facts and relevant evidence submitted below. Accordingly, we will only address the evidence submitted after that decision was issued. In response to the NOID, the petitioner submitted copies of the documents previously filed and a November 23, 2006 letter from [REDACTED], Executive Director of the Behavioral Health Associates of Hudson, LLC. [REDACTED] reports that the petitioner "is a victim of spousal abuse, causing major depression, post-traumatic stress disorder and a host of other psychological problems." [REDACTED] explains that the petitioner will need to attend numerous psychotherapy sessions so that she may be fully restored to her psychological and emotional health. The petitioner submitted a second letter from [REDACTED] reporting that with the help of therapy sessions, the petitioner "has made considerable changes in the reduction of clinical symptoms suffered due to Major Depressive Disorder and Post Traumatic Stress Disorder." [REDACTED] provides no further, probative information.

The petitioner also submitted a second letter, undated, from [REDACTED] reporting that the petitioner "was examined in my office on February 2, 2005[.] Patient presented with swollen lip, slightly bruised and two loose teeth number #7 and #8. Upon examination, the teeth appeared to be loosen up as a result of Trauma. Patient informed me that the Trauma was a result of a hit delivered by her husband during some sort of argument. Teeth were bonded together and splintered with acrylic and advised to return for post operative examinations." It is noted that neither of [REDACTED] letters is written on official letterhead, and the record contains no evidence of his credentials.

The record also contains an undated letter signed by "Your Loving Husband [REDACTED]" in which the writer professes his love for the petitioner and laments, among many things, hitting the petitioner. The signature, however, does not match the signature that appears on the document for Cromwell Realty Partners LLC for [REDACTED]. It does, however, match the signature for [REDACTED] on the I-130 petition in the evidence of record that was prepared by [REDACTED].

⁴ The Internet article at <http://www.dos.state.pa.us> entitled "SECRETARY OF THE COMMONWEALTH RELEASES STATE HEALTH LICENSING BOARDS ACTIONS - (1st Quarter 2006)" reports that [REDACTED] license no. [REDACTED] of Union City, NJ, was indefinitely suspended for failure to pay a \$1,000 civil penalty. (12-12-05)."

³ The "List of Currently Disciplined Practitioners" at the website at <http://www.usdoj.gov/eoir/profcond/chart.htm> reports the "Final Discipline Imposed" on [REDACTED] as "Expelled", effective May 18, 2007. The report reflects that on April 19, 2007, Mr. [REDACTED] pled guilty and was convicted of a "serious crime" within the meaning of 8 C.F.R. § 1003.102(h), for fraud and misuse of visas/permits, in violation of 18 U.S.C. § 1546(a). Consequently, on May 18, 2007, [REDACTED] was suspended from the practice of law before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security, pending final disposition of the proceeding.

The petitioner also submitted various other documents, including: a November 27, 2006 letter from the petitioner's mother-in-law, [REDACTED]; a November 22, 2006 letter from the petitioner's niece, [REDACTED]; a November 30, 2006 letter from the petitioner's brother-in-law, Mr. [REDACTED]; a November 10, 2006 letter from the petitioner's friend, [REDACTED]; an undated letter from the petitioner's friend, [REDACTED] and a November 14, 2006 letter from Rev. [REDACTED]

On certification, counsel states, in part: "All of the affidavits and declarations submitted including those by [REDACTED] and [REDACTED] are consistent with petitioner's account of her shared life with her husband, [REDACTED]. . . Thus, the Director's finding that the evidence submitted was not credible was patently wrong, and the decision must be reversed and a finding in favor of petitioner should be entered."

The evidence submitted by the petitioner in response to the NOID does not overcome the director's finding that the petitioner failed to establish that her U.S. citizen husband battered or subjected her to extreme cruelty during their marriage. As found by the director in his March 22, 2007 decision, the supporting documentation contains numerous unexplained inconsistencies. In addition to questionable signatures of the petitioner's husband, discussed above, the November 23, 2006 report from [REDACTED], MSW, Ph.D., Executive Director of the Behavioral Health Associates of [REDACTED], contains inconsistencies. For example, [REDACTED] reports that the petitioner met her spouse in January 2001, which conflicts with information in the petitioner's affidavit that she met him in June 2001. He also reports that the petitioner's spouse pinched the petitioner, pulled her hair, smashed plates and drinking glasses, threatened: "I will kill you and no one will ever find you and if I don't have you, no one can have you", allegations that were not mentioned in the petitioner's September 14, 2005 affidavit. Thus, even though [REDACTED] reports that the petitioner was "unable to recall significant aspects of the trauma she suffered from her husband," it appears that she actually added new details. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988).

It is also noted that the letters/affidavits mentioned above contain deficiencies and inconsistencies. The November 27, 2006 letter from [REDACTED] alleges that the petitioner was slapped and punched in the face for not fixing her spouse a plate of food during a surprise birthday party for the petitioner. The petitioner, however, did not mention this incident in her September 14, 2005 affidavit. Moreover, some of the letters/affidavits allude to the petitioner's teeth being knocked out by the petitioner's spouse, when the letters from [REDACTED] reported two loosened teeth. Again, 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988). In addition, as discussed above, neither of the letters from [REDACTED], as the petitioner's alleged dentist, is written on official letterhead, and the record contains no evidence of his credentials. Moreover, the letters from [REDACTED] and [REDACTED] are based on conversations with the petitioner, though they report no observation of the alleged abuse. Neither does [REDACTED] report any observation of the alleged abuse. As correctly determined by the petitioner, the record lacks any additional primary evidence to document the petitioner's claim that she was battered by or subjected to extreme cruelty by her spouse, and the secondary evidence and affidavits lack credibility.

Upon review, we concur with the director's determination. The petitioner has submitted no further evidence since the issuance of that decision. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the reasons stated above, 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. Accordingly, the March 22, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The director's decision of March 22, 2007 is affirmed. The petition is denied.