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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

BA

JUN 11 2009

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

EAC 07 103 50178

IN RE:

Petitioner:

[REDACTED]

PETITION: Petition for Immigrant Battered 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

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.

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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant was filed February 28, 2007. The director issued a request for further evidence (RFE) on December 6, 2007. Upon review of the evidence in the record including the petitioner's response to the RFE, the director denied the petition on October 3, 2008 because the petitioner had failed to establish that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse. The AAO concurs with the director's determination that the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by his spouse. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal. On the Form I-290B, counsel asserts that the petitioner suffered from domestic violence perpetrated by his wife and contends that abuse may take numerous forms. Counsel claims that daily belittling, shouting demands, and isolating are all parts of the same problems. Counsel asserts that emotional abuse is not easily apparent and is harder to validate. Counsel asserts that "[b]attered people can be physiologically and emotionally abused." Counsel avers that one of the tactics used by the petitioner's spouse was to isolate the petitioner from his friends and family and to constantly criticize the petitioner's looks and his health problems. In addition to counsel's statement on the Form I-290B, counsel submitted four statements wherein each declarant stated that he or she was aware of the problems during the petitioner and his spouse's marriage and that the problems had been going on for many years. The petitioner's sister indicated: that the petitioner's spouse criticized the petitioner for everything he did, for what he wore, and for how he looked; that she isolated him from family and friends; and that the petitioner's spouse called the petitioner a pig at a dinner the petitioner's sister was invited to, ostensibly because of the petitioner's Apnea and snoring problems. The record does not include further information or evidence on appeal.

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.”

Neither counsel nor the petitioner has identified specifically any erroneous conclusion of law or statement of fact for the appeal. The AAO concurs with counsel’s assertions that domestic violence may take different forms and that “[b]attered people can be physiologically and emotionally abused.” However, counsel does not provide further evidence to support his assertions that daily belittling, shouting demands, and isolating the petitioner constituted extreme cruelty in this matter. Neither does counsel substantiate that the petitioner’s spouse’s criticizing of the petitioner’s looks and health problems constituted extreme cruelty in this matter. 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).

The AAO has reviewed the statements provided by the four declarants including the petitioner’s sister’s statement on appeal. The statements provided are general and do not provide any probative information that would allow a conclusion that the petitioner was subjected to extreme cruelty by his spouse. The record on appeal does not include any substantive claims that the director’s decision included erroneous conclusions of law or statements of fact; thus there is no basis provided for this appeal. The AAO is without further evidence or argument to evaluate regarding the petitioner’s failure to establish an essential element of eligibility for this benefit.

Although the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding and the petitioner is ineligible for this relief based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) that was in effect at the time the petition was filed. On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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. The petitioner has not sustained that burden.

ORDER: The director’s decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.