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U.S. Department of Homeland Security
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

89



FILE: [Redacted] Office: VERMONT SERVICE CENTER
EAC 04 078 50171

Date: MAR 10 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)

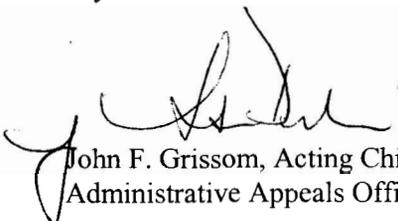
ON BEHALF OF PETITIONER:



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.

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 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].

In this matter, the director initially denied the petition on January 4, 2005, finding that the petitioner failed to establish that she had resided with her spouse and that she entered their marriage in good faith. In its May 10, 2007 decision on appeal, the AAO concurred with the director's determinations but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on July 10, 2007 and re-issued the NOID on July 24, 2007 (due to a change in counsel's address) which informed the petitioner that she had failed to establish that she had entered into the marriage in good faith. In response to the NOID, the petitioner submitted a letter dated August 20, 2007 from [REDACTED] the petitioner and her former spouse's landlord at an address in Springfield, Massachusetts. Ms. [REDACTED] indicated that she first met the petitioner's former spouse in 1997 and that she had first become acquainted with the petitioner in March 1998. Ms. [REDACTED] indicated further that she became aware that the petitioner and D-M-¹ were dating as she saw the couple together and that on November 3, 2000, became aware that the couple married and moved in together. Ms. [REDACTED] states that it was clear that they were living together as husband and wife from that time forward. The director noted that he had considered the letter submitted as well as counsel's cover letter and Form I-797 notices

¹ Name withheld to protect the individual's identity.

pertaining to the petitioner's Form I-360 filing. The director denied the petition on December 13, 2007, observing that none of the evidence submitted established that the petitioner had entered into the marriage in good faith. The director certified his decision to the AAO for review.

In the AAO's prior decision of May 10, 2007, incorporated here by reference, we discussed the pertinent facts and relevant evidence submitted, finding that the petitioner had not submitted evidence that established that she had entered into the marriage in good faith. The director provided an opportunity for the petitioner to provide additional evidence prior to entering his decision on December 13, 2007.

On certification, counsel for the petitioner requested, on the petitioner's behalf, an opportunity for the petitioner to present herself for an interview to explain her situation to an immigration officer, under oath, due to her inability to provide evidence of her good faith marriage. Neither the petitioner nor counsel has adequately explained why the petitioner cannot offer evidence through written sworn testimony to support her claim. On certification, the petitioner has not provided any further evidence describing her marriage or any other evidence demonstrating that she had entered into the marriage in good faith. The AAO acknowledges the petitioner's financial difficulties and inability to live in one place since the date of the marriage, but does not find this information sufficient to require a remand and further consideration of the matter. The petitioner had the opportunity to present additional evidence in response to the director's NOID and again on certification to establish that she entered into her marriage in good faith, but she has failed to do so. As the record does not include evidence, including testimonial evidence, describing the petitioner's courtship, initial and ongoing interaction with D-M-, and/or other evidence establishing that she entered into the marriage in good faith, the petition is not approvable. The AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied and the appeal dismissed for the above stated reason. 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 December 13, 2007 decision is affirmed. The petition is denied.