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



U.S. Citizenship  
and Immigration  
Services

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MAR 25 2009

FILE:

Office: VERMONT SERVICE CENTER

Date:

EAC 07 051 50289

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. The matter is now before the Administration Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. 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).

The director denied the petition on October 23, 2007, observing that the petitioner in this matter submitted a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant on September 7, 2002, prior to filing the petition that is the subject of this appeal. The petitioner submitted a personal statement dated May 15, 2002 in support of the 2002 petition. The director informed the petitioner of the deficiencies of the record on April 9, 2003 and provided a list of documents that would assist in establishing the petitioner’s claim. Upon review of the record, the director determined that the record did not establish eligibility for this benefit and denied the petition on September 18, 2003. The petitioner appealed the decision to the AAO and the AAO dismissed the appeal on November 9, 2004.

The petitioner filed the second Form I-360, the petition that is the subject of this appeal, on December 11, 2006. The petitioner submitted the same personal statements that had been submitted in support of the 2002 petition, including an October 14, 2003 personal statement that had been submitted in support of the appeal. Upon review of the record, the director determined that the petitioner had not provided additional information subsequent to the decision of the AAO in the 2002 matter. The director issued a Notice of Intent to Deny (NOID) the petition on June 12, 2007 informing the petitioner that he had not submitted evidence that he had been subjected to battery or extreme cruelty and again informing the petitioner of the types of documents that might assist in establishing his claim. The petitioner submitted an affidavit indicating that he had submitted all the documents he had to show that he had entered into the marriage in good faith. The director noted in his October 23, 2007 decision that the petitioner had not been asked to establish that he had entered the marriage in good faith, but rather that he had been subjected to battery or extreme cruelty. The director found that the petitioner had not provided evidence sufficient to establish that he had been subjected to battery or extreme cruelty and thus was not qualified to receive this benefit.

On appeal, the petitioner’s representative provides a statement and attaches photocopies of utility statements, greeting cards, and banking statements and indicates that the petitioner does not have other

documents because his wife took everything with her when she left. These documents have all been previously submitted and reviewed and do not address the issue in this matter. The petitioner's representative requests approval of the matter for humanitarian reasons.

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."

The director in this matter has twice determined that the petitioner did not submit sufficient evidence to establish eligibility for this benefit. The petitioner has been given numerous opportunities to specifically detail the abuse he claims to have suffered and the petitioner has failed to do so. The evidence has been considered and has been found to be inadequate to establish that the petitioner in this matter suffered battery or extreme cruelty perpetrated by this wife. The record on appeal does not identify specifically any erroneous conclusions of law or statements of fact made by the director as a basis for the appeal. The petitioner does not submit further evidence or documentation in support of the appeal. The AAO is without further evidence or argument to evaluate regarding the petitioner's failure to establish essential elements of eligibility for this benefit. The petitioner's failure to specifically address the director's findings and present evidence and argument identifying the director's erroneous conclusions of law or statements of fact mandate the summary dismissal of the appeal.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

The petition will be denied for the stated reasons set out in the director's decision, 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.

ORDER:       The appeal is summarily dismissed.