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

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] EAC 07-093-50203 Office: VERMONT SERVICE CENTER Date: MAY 0 1 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:

[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. Because the petition is not approvable, however, it will be remanded for further action.

The petitioner seeks classification as a special immigrant 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 having been battered or subjected to extreme cruelty by his U.S. citizen spouse. He filed the instant Form I-360 Petition on February 13, 2007. The director denied the petition on September 22, 2008, detailing numerous inconsistencies in the petitioner's claims and finding insufficient credible evidence in the record to support those claims. The director found that the petitioner had failed to establish that he had a qualifying relationship as the spouse of a U.S. citizen; that he was eligible for immigrant classification based on a qualifying relationship; that he had been battered or subjected to extreme cruelty by his spouse, and that he is a person of good moral character.

The petitioner, through counsel, filed a timely appeal with a brief on October 24, 2008. In his brief, counsel asserts that the petitioner has met all of the requirements for eligibility and that the director erred in finding the petitioner not credible based on inaccurate information in his asylum application and by "completely disregarding important information pertaining to such inaccuracies." Counsel repeated the petitioner's claim that the incorrect information contained on his asylum application was due to misrepresentations made by the petitioner's prior representative. Counsel also explains the circumstances of the petitioner's prior divorce, provides reasons for the petitioner's use of an alias on his asylum application, claims that the petitioner's claim of abuse is credible, and states his disagreement with the director's finding that the petitioner did not establish that he is a person of good moral character. While counsel provides his own opinion regarding the weight that should have been accorded the evidence and provides his own explanations for some of the inconsistencies in the record noted by the director, he does not provide any additional evidence for consideration by the AAO. The unsupported statements of counsel on appeal are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that an appeal shall be summarily dismissed when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Inasmuch as the petitioner has failed to provide any additional evidence or specifically identify any erroneous conclusion of law or statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal.

For the reasons noted in the director's decision, the petitioner has failed to establish by a preponderance of the evidence that he had a qualifying relationship as the spouse of a U.S. citizen; that he was eligible for immigrant classification based on a qualifying relationship; that he had been battered or subjected to extreme cruelty by his spouse, and that he is a person of good moral character. His appeal must be summarily dismissed. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. The

petition is not approvable for the reasons noted, with each considered as an independent and alternative bar to approval.

However, the director denied the petition without first issuing a Notice of Intent to Deny (NOID) as required under former 8 C.F.R. § 204.2(c)(3)(ii)(2007). While it is no longer a regulatory requirement for petitions filed on or after June 18, 2007, a NOID is required in this case, as it was filed on February 13, 2007. The director's decision will, therefore, be withdrawn and the case will be remanded.

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.

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