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FILE: [REDACTED] Office: VERMONT SERVICE CENTER  
EAC 07-181-50704

Date: **MAY 26 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 or reopen, 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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 her U.S. citizen spouse. She filed the instant Form I-360 Petition on June 6, 2007.

The director issued a Notice of Intent to Deny (NOID) on March 7, 2008, finding, *inter alia*, that the petitioner failed to establish that she is eligible for immigrant classification based on a qualifying relationship; that she resided with her U.S. citizen spouse; was subjected to battery or extreme cruelty by her U.S. citizen spouse; and entered into her marriage in good faith. The director noted that the petitioner's husband was convicted on February 12, 2007 of Conspiracy to Commit Visa Fraud after a guilty plea based on his marriage to the petitioner; and, in light of his conviction, it appeared that the petitioner entered into a fraudulent marriage, rendering evidence submitted with the I-360 Petition suspect. In response, the petitioner submitted additional affidavits and a legal memorandum. In her own affidavit, dated April 7, 2008, the petitioner indicated that she did not have additional evidence suggested by the director, such as tax returns or lease agreements jointly signed with her husband or a police report; she also provided explanations for some of the discrepancies that U.S. Citizenship and Immigration Services (USCIS) found during her and her spouse's prior testimony. We note that the discrepancies identified during the couple's USCIS interview, as well as the additional derogatory information regarding her husband's admission of visa fraud, had been previously revealed to the petitioner in a Notice of Intent to Deny the petitioner's Form I-485, Application to Adjust Status; and the petitioner was provided the opportunity to respond before a final adjudication of the I-485 Application on February 21, 2007. In the instant case, finding the additional evidence insufficient to overcome the grounds of denial, the director denied the petition on May 1, 2008 on the grounds enumerated above.

The petitioner, through counsel, filed a timely appeal on May 30, 2008. Counsel submitted a brief in support of the appeal, but did not submit additional evidence. In his brief, counsel repeats the claims made by the petitioner and refers to copies of electronic mail messages submitted previously; counsel then repeats the law regarding eligibility for special immigrant classification pursuant to section 204(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I) and relevant regulations regarding the petitioner's burden to show that she entered into her marriage in good faith, regardless of the intentions of her spouse. Counsel argues that the petitioner's prior detailed statement is sufficient to carry her burden of proof, and that she has been given insufficient opportunity to rebut derogatory information, noting that the record does not contain any conviction record for the petitioner's husband. We address this assertion below.

If a decision to deny a petition is based on derogatory information considered by USCIS and of which the applicant or petitioner is unaware, the petitioner "shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf

before the decision is rendered.” See 8 C.F.R. § 103.2(b)(16)(i). While there is no requirement to provide documentary proof of the derogatory information, we have attached for the petitioner’s information a copy of the record of her husband’s conviction. In this case the petitioner was informed in detail of the derogatory information in the record, including the conviction of her husband subsequent to a guilty plea, and she has been given ample opportunity to rebut such information, including in connection with the prior adjudication of her application to adjust to lawful permanent residence (Form I-485). This information was provided in the NOID in the instant case and in the director’s final decision; however, no evidence to rebut the derogatory information has been submitted in response to the NOID or on appeal of the final decision. We note that the director’s denial of the I-360 Petition was based on the petitioner’s failure to establish by a preponderance of the evidence that she was eligible for the benefit sought. Her husband’s conviction for visa fraud carries significant evidentiary weight in this regard; however, it is not the sole basis for the denial.

While counsel provides his own opinion regarding the weight that should have been accorded the evidence in this case and repeats the claims of the petitioner, 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.

**ORDER:** The appeal is dismissed.