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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



U.S. Citizenship  
and Immigration  
Services

B9.

FILE:

Office: VERMONT SERVICE CENTER Date: AUG 13 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be 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 issued a Notice of Intent to Deny (NOID) the petition dated October 23, 2009 notifying the petitioner and counsel that the petitioner had not established that she had a qualifying relationship with the claimed abusive individual. The director noted that the record did not establish that she and the claimed abuser were married and that the petitioner's state of residence, California, did not recognize common law marriages. The director also notified the petitioner that the record contained deficiencies regarding the issue of her good faith entry into the qualifying relationship.

Upon review of the evidence submitted in response to the NOID, the director denied the petition on March 9, 2010, determining that the petitioner had not established that she had a qualifying relationship with a United States citizen and thus had failed to establish eligibility to file the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

Counsel timely submits a Form I-290B, Notice of Appeal. Counsel acknowledges that there is no provision of law in the United States whereby a self-petitioner who is/was the fiancé of a U. S. citizen, but never married the U.S. citizen may be approved. Counsel asserts that United States Citizenship and Immigration Services (USCIS) should be derivatively estopped from denying approval of the petition because the petitioner relied in good faith on the claimed abuser's representation that he would marry her and the petitioner has shown that she was sexually abused by the United States citizen fiancé. Counsel contends that USCIS should expand the current provision of section 204(a)(1) to include intended spouse fiancés because the abuses suffered by the petitioner are the kinds of abuses from which Congress intended to protect such petitioners with this provision.

Counsel also asserts that USCIS should allow battered or abused individuals, such as the petitioner, to self-petition to show other nations that the United States protects individuals that come into the United States if they are abused by its citizens.

The record includes the following pertinent facts. The petitioner is a citizen of Viet Nam who entered the United States on a K-1 visa on April 7, 2008. The petitioner acknowledges that she did

not marry D-M-<sup>1</sup> but reportedly lived with him from April 7, 2008 to sometime in May 2008. The petitioner filed the Form I-360 on July 7, 2008.

The AAO observes that it is without authority to expand upon legislation enacted by Congress. The jurisdiction of the Administrative Appeals Office is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address counsel's estoppel claim. The language of the statute is clear. We are expected to give the words used their ordinary meaning. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). As the petitioner did not marry D-M-, she has not established a qualifying relationship as a spouse of a U.S. citizen, as required pursuant to section 204(a)(1)(A)(iii)(II)(aa). Accordingly, we concur with the director's determination that the petitioner did not establish a qualifying relationship with the claimed abuser.

Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with the claimed abuser, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the stated reasons, 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 dismissed.

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<sup>1</sup> Name withheld to protect the individual's identity.