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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: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 18 2010**  
EAC 08 146 51765

IN RE: Petitioner: [REDACTED]

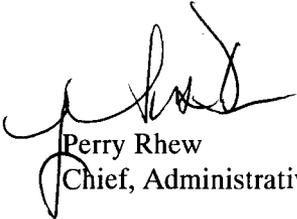
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:  
[REDACTED]

**INSTRUCTIONS:**

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.

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 The director's decision will be withdrawn and the matter remanded to the director for entry of a new decision.

The petitioner seeks immigrant classification under 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.

The director denied the petition, finding that the petitioner filed a frivolous asylum application and thus was permanently barred from receiving any immigration benefit. On appeal, counsel submits a brief and additional evidence.

Section 208(d)(6) of the Act states:

Frivolous applications

If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A) [of the right to representation by counsel and the consequences of knowingly filing a frivolous asylum application], the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

A review of the record reveals the following facts and procedural history. On January 29, 2001, an immigration judge denied the petitioner's applications for asylum, withholding of removal, and protection under the Convention Against Torture. The transcript of the immigration judge's oral decision indicates that he found that the petitioner had deliberately fabricated the asylum claim, but that he would not hold the petitioner to the consequences of having filed a frivolous asylum claim because the petitioner was not notified, either orally or in writing, of the consequences of filing a frivolous asylum claim. The Board of Immigration Appeals (BIA) dismissed the petitioner's appeal and denied two motions to reopen. In its last decision, the BIA stated the following, in pertinent part:

We find no need to sua sponte reopen or reverse the Immigration Judge's decision because the Immigration Judge did not make a frivolous finding in this case. While the Immigration Judge did state his opinion that the asylum application was fabricated and frivolous, he also declined to make a frivolous finding within the meaning of the applicable statute because he specifically found that the lead applicant had not been provided the required warnings of the consequences of filing a frivolous asylum application, and the applicants thus could not be subjected to the bars associated with such a frivolous finding. . . .

As the immigration judge did not make a specific frivolous finding, the director was incorrect in finding that the petitioner could not be granted any benefits under the Act pursuant to section

208(d)(6) of the Act. Accordingly, the matter will be remanded to the director to enter a new decision on the petitioner's I-360 petition. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision that, if adverse to the petitioner, is to be certified to the AAO for review.