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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

[redacted]

B9

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 03 2010

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.

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 the $630 fee. 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 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.

The director denied the petition, after determining that the applicant had not established that: he had resided with the United States citizen spouse; he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse; and he had entered in his marriage in good faith. The director also determined that as the petitioner had married his United States citizen spouse after being placed in immigration proceedings, he was subject to section 204(g) of the Act, and the petitioner had not established, by clear and convincing evidence, that he had entered into the marriage in good faith.

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 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 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."

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, checking the box on the Form I-290B indicating that a brief and/or additional evidence is attached. A thorough review of the record does not reveal that a brief and/or additional evidence was submitted with the appeal. Thus, the record is considered complete. Counsel's statement on the Form I-290B reads:

> The Center Director's decision has disregarded substantial evidence on record involving protection orders etc. The Center Director has disregard or ignored the testimonies of eyewitnesses which do establish specific acts of cruelty against the petitioner.

Upon review of the director's decision, the director set out the deficiencies in the record regarding the petitioner's failure to establish that: he had resided with the United States citizen spouse; he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse; and he had entered in his marriage in good faith, either by a preponderance of the evidence under section 204(a)(1)(A)(iii) of the Act or clear and convincing evidence as required by section 204(g) of the Act. Counsel does not provide any further evidence or argument on appeal to support his assertion

that the director disregarded or ignored evidence of the petitioner's claim of eligibility for this benefit. Counsel does not specifically address the issues of the petitioner's failure to establish that he had resided with his United States citizen spouse or that he had failed to establish that he entered into the marriage in good faith either by a preponderance of the evidence or by clear and convincing evidence. Neither counsel nor the petitioner identifies specifically an erroneous conclusion of law or a statement of fact in this proceeding. Accordingly, the appeal must be summarily dismissed.

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.