



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

Office: VERMONT SERVICE CENTER

Date: FEB 04 2010

EAC 08 089 50226

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

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.

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 denied the petition on September 24, 2009, determining: that the petitioner had not established that he had resided with his naturalized United States citizen spouse; that he had not established that he had been subjected to battery or extreme cruelty perpetrated by his naturalized United States citizen spouse; that he had not established his good moral character; and that he had not established that he had entered into the marriage in good faith.

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal and a two-page letter in support of the appeal. Counsel asserts that the director discarded all documents provided by the petitioner and alleged that the petitioner made material inconsistent statements. Counsel contends that the photographs submitted show that the petitioner entered into a bona fide marriage, that the petitioner’s parents, residing in India, verify that the petitioner and his spouse lived like husband and wife and had a honeymoon together, and that a statement by [REDACTED] places the petitioner and his wife in the same residence where they resided as husband and wife and where he witnessed abuse. Counsel also provides the petitioner’s 2008 pay stubs and the petitioner’s 2007 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, which shows that the petitioner is single.

The record does not contain further information or evidence submitted on appeal. Thus, the record is considered complete.

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.”

The director in the September 24, 2009 decision set out inconsistencies in the record regarding the petitioner’s claimed residence, found that the affidavits submitted on the petitioner’s behalf did not provide detail of the circumstances of the marriage and also contradicted the petitioner’s personal statements, and found that photographs of a wedding did not establish that the petitioner had entered

into the marriage in good faith. The director detailed the deficiencies of the evidence in a cogent and articulate manner.

On appeal, counsel does not address the inconsistencies in the record and does not provide evidence or argument that would assist in establishing the petitioner's eligibility for this benefit. The AAO observes that without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel in this matter does not identify specifically any erroneous conclusions of law or statements of fact made by the director as a basis for the appeal. Counsel's disagreement with the director's findings is not supported by independent and objective evidence. The AAO is without further evidence or argument to evaluate regarding the petitioner's failure to establish essential elements of eligibility for this benefit. The petitioner's failure to specifically address the director's findings and present evidence and argument identifying the director's erroneous conclusions of law or statements of fact mandate the summary dismissal of the appeal.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

The petition will be denied for the stated reasons set out in the director's decision, 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 summarily dismissed.