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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**

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FILE:



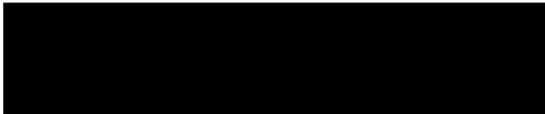
Office: VERMONT SERVICE CENTER

Date:

FEB 25 2010

EAC 07 224 50025

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:

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 July 24, 2009, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty by his United States citizen spouse.

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal. Counsel also submits six additional form affidavits. Each affiant states that he or she witnessed domestic abuse committed by the petitioner’s spouse but none of the affiants provide information regarding the circumstances or the outcome of the claimed abuse.¹ Counsel also submits approval notices for two other individuals who had filed Forms I-360, Petition for Amerasian, Widow(er), or Special Immigrant. Counsel asserts that the approved cases are similar to the petitioner’s case and mistakenly indicates that the approved cases are precedent decisions. 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 petitioner does not provide further evidence or argument that establishes the director’s decision was based on a misunderstanding of the facts of the matter or that the director misinterpreted the law. The additional affidavits provided on appeal do not provide any new information and simply provide the same unsubstantiated and questionable claims of abuse as were before the director. In addition, counsel’s assertion that two AAO Form I-360 decisions had been designated precedent decisions is

¹ The AAO observes that the petitioner’s counsel in a matter relating to the petitioner’s Form I-751, Petition to Remove Conditions on Residence, indicates that the petitioner no longer wishes to pursue the Form I-360 at this time. As the AAO has not been directly notified of the petitioner’s desire to withdraw the appeal of the Form I-360, the AAO provides this decision.

erroneous. Moreover, counsel's assertion that the previously decided matters are similar to the matter at hand is unsubstantiated. Counsel furnishes no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all United States Citizenship and Immigration Services' (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel's brief on appeal consists of a restatement of the director's decision and the applicable law, as well as the assertion that the petitioner complies with all the requirements for an abused spouse petition. However, 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).

Neither counsel nor the petitioner identifies specifically any erroneous conclusions of law or statements of fact made by the director as a basis for the appeal. The AAO is without further probative 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. The evidence has been considered and has been found to be insufficient to establish that the petitioner in this matter suffered battery or extreme cruelty perpetrated by the petitioner's spouse.

Inasmuch as neither counsel nor the petitioner identifies 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. 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.