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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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MAR 12 2010

FILE:

[REDACTED]
EAC 07 083 50345

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner: [REDACTED]

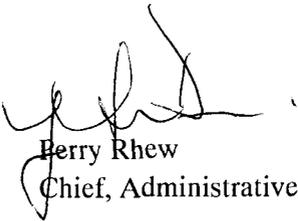
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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).


Berry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was filed January 30, 2007. The director issued a request for further evidence (RFE) on October 9, 2007. Upon review of the evidence in the record including the petitioner's response to the RFE, the director denied the petition on May 20, 2008 because the petitioner failed to establish that he was a victim of abuse perpetrated by his United States citizen spouse. The AAO concurs with the director's decision; nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii) that was in effect at the time the petition was filed.

The AAO observes that counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion. Counsel indicates that his brief and/or additional evidence will be submitted to the AAO within 30 days. Upon review of the record, the AAO does not find that further evidence or a brief were submitted. Counsel's statement on the Form I-290B reads:

The petitioner demonstrated by clear and convincing evidence that pursuant to Sec204(a)(1)(5) of the Act he had been the subject of extreme cruelty perpetrated by the citizen spouse. The decision is contrary to the conclusions of MSW Smith who counseled him and presented an evaluation (Exh.C)

The record on appeal does not include an Exhibit C, although the record before the director included the evaluation of MSW Smith and the director's determination that the evaluation did not provide probative evidence that the petitioner had been subjected to extreme cruelty. As observed above, 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.”

Neither counsel nor the petitioner has identified specifically any erroneous conclusion of law or statement of fact for the appeal. The petitioner has not provided any further evidence on appeal. The record does not include 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. Counsel’s statement on the Form I-290B is insufficient to form a basis of 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 would mandate the summary dismissal of the appeal.

Although the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding and the petitioner is ineligible for this relief based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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. The petitioner has not sustained that burden.

ORDER: The director’s decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.