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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



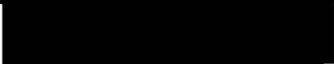
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FILE:



Office: VERMONT SERVICE CENTER

Date:

MAR 12 2010

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IN RE:



PETITION: Petition for Special 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

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.

The petitioner filed the instant Form I-360 on March 23, 2007. The director denied the petition on February 22, 2008, on the basis of his determination that the petitioner had failed to establish that she shared a joint residence with H-G-,¹ her United States citizen husband, or that she had married H-G- in good faith. The petitioner appealed the director's decision to the AAO. In its March 30, 2009 decision, the AAO agreed with the director's analysis. However, although the AAO agreed with the director's reasoning, it remanded the petition to the director, on technical grounds, for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).²

The director issued the requisite NOID on May 7, 2009. Counsel and the petitioner, however, elected not to respond to the NOID. Accordingly, the director denied the petition on August 13, 2009, and certified his decision to the AAO for review. In his denial, the director found, again, that the petitioner had failed to establish that she shared a joint residence with H-G- or that she had married him in good faith. Counsel submitted a supplemental brief and additional evidence on September 10, 2009.

As indicated previously, the same issues before the AAO when it issued its last decision are now again before the AAO. As the AAO found the evidence of record insufficient to establish the petitioner's eligibility in its March 30, 2009 decision, on certification the AAO will only consider the evidence submitted by the petitioner after its issuance of that decision. The following evidence has been submitted into the record since the AAO's March 30, 2009 decision:

- The petitioner's September 8, 2009 self-affidavit;
- Copies and certified translations of medical information regarding a miscarriage suffered by the petitioner in 1997, as well as medical follow-up in 1998; and
- Counsel's September 8, 2009 brief.

The wording of the petitioner's September 8, 2009 self-affidavit is identical to that of the undated self-affidavit she submitted on March 23, 2007. As the AAO considered this testimony at the time

¹ Name withheld to protect individual's identity.

² On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (April 17, 2007). The rule became effective on June 18, 2007, *after* the filing of this petition on March 23, 2007.

it issued its March 30, 2009 decision, the AAO need not consider it again. For this same reason, the AAO need not consider the assertions of counsel in her brief, as the wording of counsel's September 8, 2009 brief is identical to that of counsel's April 22, 2008 brief. Again, the AAO considered counsel's assertions at the time it issued its March 30, 2009 decision and will not do so again. Had counsel wished to make new arguments or assertions, the AAO would have considered them. Finally, the AAO notes that most of the documentation submitted on certification regarding the petitioner's miscarriage was also in the record at the time the AAO issued its decision and has thus already been considered.

The only document submitted on certification that has not already been considered by the AAO is a September 18, 2006 translation of a document discussing the petitioner's miscarriage. This document, however, does not establish that the petitioner shared a joint residence with H-G- or that she married him in good faith. The AAO notes further that counsel and the petitioner have failed to address the evidentiary deficiencies discussed by the AAO in its March 30, 2009 decision.

Upon review, the AAO affirms the decision to deny this petition. The new evidence of record, which consists solely of the September 18, 2006 document regarding the petitioner's miscarriage, fails to overcome the previous decisions of the director and the AAO to deny the petition. Counsel and the petitioner have failed to overcome the findings of the AAO and the director that the petitioner has failed to establish she shared a joint residence with H-G and that she entered into marriage with H-G- in good faith. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and his petition must be denied. The director's decision will be affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's May 7, 2009 decision is affirmed. The petition is denied.