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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
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FILE:

EAC 06 173 50214

Office: VERMONT SERVICE CENTER

Date:

MAY 25 2010

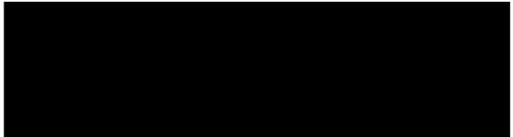
IN RE:

Petitioner:



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:



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.

Thank you,

Perry 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 May 17, 2006. The director issued a request for further evidence (RFE) on April 1, 2009. Upon review of the evidence in the record including the petitioner's response to the RFE, the director denied the petition on October 27, 2009 because the petitioner had failed to establish that he had entered into the marriage in good faith. The AAO concurs with the director's determination that the petitioner has not established that he entered into the marriage in good faith. 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) in effect when the petition was filed.

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion. On the Form I-290B, counsel asserts that the evidence submitted clearly demonstrates that the petitioner qualifies for this benefit. Counsel indicates that he will provide further explanation in a brief that will clarify the areas United States Citizenship and Immigration Services (USCIS) raised. Counsel asserts that the petitioner married his spouse in good faith. Upon review of the totality of the record, the AAO does not find a brief or further evidence resolving the numerous inconsistencies noted by the director in his decision. Moreover, the record does not include further evidence or information supporting counsel's assertion that the petitioner married his spouse in good faith. 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. 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).

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) in effect when the petition was filed. On remand, the director should issue a NOID detailing the inconsistencies in the record that undermine the petitioner's credibility and request any evidence that would support the petitioner's claim that he entered into the marriage in good faith. In addition, the director should address the petitioner's claim that he was subjected to abuse perpetrated by the United States citizen spouse and should address the lack of evidence demonstrating that the petitioner resided with his claimed abusive spouse and request any evidence that would assist in establishing these two additional elements of eligibility for this benefit.

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.