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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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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER

NOV 10 2010

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:

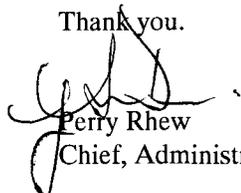
[REDACTED]

INSTRUCTIONS:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.


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.

The director denied the petition, after determining that the applicant had not established: that he had a qualifying relationship with the claimed abusive spouse; that he was eligible for immigrant classification based on a qualifying relationship; that he had resided with his United States citizen spouse; that he had been subjected to battery or extreme cruelty by his United States citizen spouse; and that he had entered into the marriage in good faith.

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 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 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.”

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, checking the box on the Form I-290B indicating that a brief and/or additional evidence will be submitted to the AAO within 30 days. To date no further information or evidence has been submitted. On the Form I-290B, counsel asserts that the submitted sworn affidavits and a psychological evaluation show that the petitioner had a qualifying relationship with an abusive spouse and that he suffered abuse that qualified as extreme cruelty. Counsel reiterated that arguments in support of the appeal would be submitted in 30 days. As noted above, the record does not include further evidence, a brief, or documentation in support of the appeal. Thus, the record is considered complete.

Upon review of the director’s decision in this matter, in which he considered the petitioner’s personal statements and the declarations submitted on his behalf as well as the psychological evaluation submitted, the AAO concurs with the director’s decision. The director properly concluded that the petitioner had not submitted sufficient probative evidence to demonstrate that he had resided with his United States citizen spouse, that he had been subjected to battery or extreme cruelty by his United States citizen spouse, and that he entered into the marriage in good faith. The record also includes a copy of the petitioner’s Certificate of Divorce indicating that on March 17, 2009, the Judgment of Divorce became Absolute. The Form I-360, Petition for Amerasian,

Widow(er) or Special Immigrant, was filed March 20, 2009, subsequent to the termination of the petitioner's marriage.

On appeal, counsel for the petitioner does not provide any further evidence or argument to support the petitioner's claim of eligibility for this benefit. Simply asserting that the petitioner has established two of the five elements determined by the director to be insufficient does not establish the petitioner's eligibility for this benefit. Neither counsel nor the petitioner identifies specifically an erroneous conclusion of law or a statement of fact in this proceeding. Accordingly, the appeal must be summarily dismissed.

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.