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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date:

MAY 10 2011

Office: VERMONT SERVICE CENTER

FILE: A93 448 567

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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:

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, with a fee of \$630. 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. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will remain 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).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will repeat certain facts only as necessary here. In this case, the director initially denied the petition on May 1, 2008, for failure to establish the requisite battery or extreme cruelty and good-faith entry into the marriage. In the AAO's July 8, 2009 decision on appeal, the AAO concurred with the director's determination that the petitioner failed to establish the requisite battery or extreme cruelty and good-faith entry into the marriage. The AAO, however, remanded the petition for issuance of a Notice of Intent to Deny (NOID), as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹ Upon remand, the director issued a NOID on February 19, 2010, which informed the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish the requisite battery or extreme cruelty and good-faith entry into the marriage. The petitioner, through counsel, responded to the NOID with additional documentation and the director denied the petition on February 3, 2011, finding that the petitioner provided insufficient evidence to establish the requisite battery or extreme cruelty and good-faith entry into the marriage. The director certified his decision to the AAO for review and notified the petitioner that

¹ 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 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

he could submit a brief to the AAO within 30 days of service of the director's decision. On March 7, 2011, the following documentation was received by the AAO from counsel: counsel's letter dated March 2, 2010; and copies of documentation already in the record.

On certification, counsel states, in part, that the petitioner has already submitted sufficient documentation to establish the requisite abuse and good-faith entry into the marriage.

In his response to the director's NOID, counsel submitted a rebuttal dated March 23, 2010, which was almost identical to his June 19, 2008 brief on appeal. In his March 23, 2010 rebuttal, counsel stated, in part, that: the director erred in discrediting the statements of witnesses and the psychological evaluation from [REDACTED]; the petitioner's testimony, which constitutes two detailed statements, along with the testimony of his affiants and the psychological evaluation, establish the elements of his petition; the petitioner's testimony of his genuine relationship with his wife and the abuse he suffered by his wife is credible and corroborated by witnesses, [REDACTED], [REDACTED], and [REDACTED]; the purported discrepancies in the affidavits of the witnesses and in the psychological evaluation do not undercut their corroboration of the petitioner's genuine marriage and the abuse he suffered by his wife; though the witness statements were prepared by the petitioner's suspended former attorney, the suspension due to unprofessional conduct of the petitioner's former attorney does not preclude the witness statements from being credible evidence; and the director failed to fully consider the evidence submitted in response to the Request for Evidence (RFE).

In his March 23, 2010 affidavit submitted in response to the director's NOID, the petitioner stated, in part, that: he met his wife at a party in Texas in December 1999; after he returned to Massachusetts, he and his wife stayed in contact by phone, mail, and his wife's visits to Massachusetts; during his wife's visits, they made food together, watched movies, relaxed, chatted, and spent time with his [REDACTED] friends; they married on August 9, 2002, in Texas, after which they held a small party at a hotel attended by his wife's brother and eight friends; after they were married, they moved into the petitioner's home at [REDACTED] Massachusetts; his wife had a severe problem with alcohol and drug abuse; after her trip to Texas from December 2002 to late February 2003, his wife relapsed and screamed obscenities at him, slapped him, pushed him on the ground, kicked him in the groin, and tormented him about his enlarged prostate; the petitioner felt depressed, anxious, and scared and had suicidal thoughts, flashbacks and insomnia due to his wife's abuse; the petitioner sought help from a counselor for his depression and insomnia; though they are still married, he and his wife separated on December 16, 2003, when his wife beat him with a beer bottle.

Upon review, we concur with the director's determination. As stated by the director in his decision, the additional evidence submitted in response to the NOID does not overcome the grounds for denial or resolve the inconsistencies and/or deficiencies in the record. Again, counsel's March 23, 2010 rebuttal in response to the director's NOID is almost identical to his June 19, 2008 brief on appeal. In this matter, the inconsistent testimony of the petitioner, Ms. [REDACTED], Mr. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] is adequately discussed by the AAO in its July 8, 2009 decision and need not be repeated in detail here. The AAO acknowledges counsel's assertions in response to the

NOID that the purported discrepancies in the affidavits of the witnesses and in the psychological evaluation do not undercut their corroboration of the petitioner's genuine marriage and the abuse he suffered by his wife, and that the repeated text in the affidavits of the witnesses was due to the petitioner's suspended former counsel's own unprofessional conduct and does not preclude the statements from being credible. As discussed by the AAO in its previous decision, however, counsel offered no evidence in support of his assertions beyond the petitioner's own testimony; no additional testimony from the evaluator, Ms. [REDACTED], or from the witnesses, Mr. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] was submitted. The AAO also discussed in adequate detail that counsel had not established any claims of ineffective assistance of previous counsel. In sum, the evidence submitted in response to the NOID, which was primarily the same evidence submitted on appeal, fails to establish the requisite abuse. The petitioner's March 23, 2010 affidavit submitted in response to the director's NOID, is also insufficient to establish that he entered into the marriage in good faith. As described above, the petitioner provided few details in his March 23, 2010 affidavit to establish his *good-faith entry into the marriage*. Again, as discussed in the AAO's previous decision, the petitioner's intentions upon entering into the marriage are vague and generalized. Specifically, the record lacks basic information about the petitioner's courtship with his wife, their decision to marry, their wedding ceremony, and their life together, apart from the abuse. As explained above and in the AAO's previous decision, the record contains insufficient evidence and unresolved inconsistencies and/or deficiencies pertaining to the petitioner's claimed abuse from his wife and his good-faith entry into the marriage. Upon review, we concur with the director's determination, and consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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. Accordingly, the February 3, 2011 decision of the director is affirmed and the petition remains denied.

ORDER: The director's decision of February 3, 2011 is affirmed. The petition remains denied.