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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

PUBLIC COPY



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Date: MAY 10 2011

Office: VERMONT SERVICE CENTER

FILE: 

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)

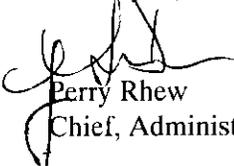
ON BEHALF OF PETITIONER:


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 January 2, 2008, for failure to establish the requisite battery or extreme cruelty during the marriage. In the AAO's April 6, 2009 decision on appeal, the AAO concurred with the director's determination that the petitioner failed to establish the requisite battery or extreme cruelty. The AAO also found beyond the decision of the director that the petitioner failed to establish the requisite joint residence and good moral character. 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 April 6, 2010, which informed the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish the requisite joint residence, battery or extreme cruelty, and good moral character. 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 joint residence and battery or extreme cruelty. The

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.

director certified his decision to the AAO for review and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. On March 2, 2011, the following documentation was received by the AAO from counsel: counsel's letter dated February 28, 2011; an affidavit dated February 24, 2011, from [REDACTED] a letter dated February 23, 2011, [REDACTED] and copies of documentation already in the record.

On certification, counsel states, in part, that the additional evidence on certification along with the documents previously submitted demonstrate that the petitioner married in good faith and suffered battery and extreme cruelty from his wife. In her February 24, 2011 affidavit, [REDACTED] states, in part, that she conducted a clinical interview with the petitioner on February 24, 2011, which lasted approximately two hours, and that the petitioner described symptoms consistent with a diagnosis of Post Traumatic Stress Disorder (PTSD) and Major Depressive Disorder. [REDACTED] also states that the petitioner suffers from psychological symptoms associated with domestic abuse and that his symptoms have subsided "somewhat" due to his psychiatric care and medications. [REDACTED] recommends that the petitioner be allowed to stay in the United States and continue with the mental health services that he is receiving. In her February 23, 2011 letter, [REDACTED] states, in part, that the petitioner is currently receiving mental health treatment for PTSD, with symptoms secondary to a psychological trauma, and that the petitioner attends individual therapy bi-weekly, with monthly visits for psychiatry. [REDACTED] also states that the petitioner was initially seen in May 2009, when he reported physical and emotional abuse during his marriage from "1993 to 2003."

At the outset, it is noted that counsel does not address the issue of joint residence in his February 28, 2011 letter on certification. While the AAO acknowledges the additional evidence submitted on certification concerning the alleged abuse, the February 23, 2011 letter submitted from [REDACTED] Humphrey contains inconsistent information. Specifically, [REDACTED] states that the petitioner reported emotional abuse during his marriage from "1993 to 2003," which is inconsistent with the evidence in the record, namely, the petitioner's marriage certificate, and with the petitioner's own testimony. In this matter, the petitioner married his wife on May 13, 1998, and stated in his April 18, 2006 affidavit that he started "experiencing problems" with his wife about three months after their marriage. The record contains no explanation for this inconsistency. Additional inconsistencies and/or deficiencies are detailed in the director's February 3, 2011 decision, which were associated with the additional evidence submitted in response to the NOID. Specifically, in her May 17, 2010 "Annual Reassessment," [REDACTED] stated that the petitioner and his wife had been separated for two years, which is again inconsistent with the evidence in the record, namely, the divorce decree reflecting that the petitioner and his wife were divorced on March 7, 2005, and with the information on the petition that the petitioner last resided with his wife in November 2003. [REDACTED] also indicated that the petitioner had "emergency room visits" as a result of panic attacks due to his abuse history. Although the director stated in his decision that the record contains no evidence of such emergency room visits, neither the petitioner nor counsel addresses this deficiency on certification. In addition, the director found that the record contains no evidence in support of [REDACTED] additional claim that the petitioner received prior psychiatric care. Specifically, [REDACTED] stated that the petitioner received psychotropic medication while under the care of [REDACTED] and that the petitioner reported receiving outpatient psychiatric care from [REDACTED] at Harlem

Hospital Center in 2004; however, on appeal, the petitioner submits a letter from [REDACTED] indicating that the petitioner was initially seen in May 2009. As discussed above, counsel does not address the issue of joint residence in his February 28, 2011 letter on certification. Moreover, as stated by the director, the affidavits from the petitioner's friends are insufficient evidence that the petitioner resided with his wife, as they contain inconsistencies and/or deficiencies. For example, [REDACTED] provided inconsistent information in his February 1, 2011 affidavit, namely, that the petitioner's wife threw him out of their home on March 13, 2004, which is inconsistent with the information on the petition and the petitioner's own testimony, that the petitioner last resided with his wife in November 2003, and that he never returned home again because he could no longer trust his wife. Again, on certification, neither the petitioner nor counsel addresses the inconsistencies and deficiencies discussed by the director.

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 joint residence and abuse from his wife. 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.