



U.S. Citizenship
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DATE: APR 09 2012

Office: VERMONT SERVICE CENTER

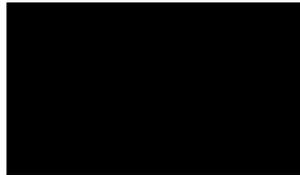
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IN RE:

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:

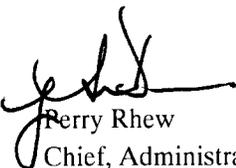


INSTRUCTIONS:

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. 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 (USC).

The director denied the petition, after determining that the petitioner had not established he had been subjected to battery or extreme cruelty perpetrated by the USC spouse or that he had entered into the marriage in good faith. The director also found that section 204(g) of the Act further bars approval of this petition.

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 submitted a Form I-290B, Notice of Appeal or Motion, on October 3, 2011, checking the box on the Form I-290B indicating that a supplemental brief and/or additional evidence would be submitted to the AAO within 30 days. To date no further information or evidence has been provided. The record is considered complete. In a statement attached to the Form I-290B, counsel references the previously submitted evidence and asserts that the director's determination that the affidavits submitted were general and vague was in error. Counsel also avers that the director erroneously found an inconsistency in the petitioner's statements. Counsel further references two statements submitted by the claimed abusive USC spouse wherein the USC spouse indicated that the petitioner loved her when they married and a statement from the USC spouse's mother who stated she knew the couple married. Counsel contends that the information in the record establishes that the petitioner entered into the marriage in good faith.

Upon review of the record, the director in this matter set out the deficiencies in the evidence that the petitioner previously submitted, and we concur with the director's assessment of the relevant evidence. Counsel's claim that the affidavits previously submitted were not vague or general because they set out the date, time, and place of specific incidents is unpersuasive. As the director determined, the affidavits do not provide probative testimony or information regarding the surrounding circumstances of the alleged incidents sufficient to ascertain that the specific incidents constituted battery or extreme cruelty as that term is defined in the statute and regulation. While counsel has provided a different perspective regarding the inconsistency noted by the director, we find no error in the director's ultimate determination that the behavior of the petitioner's spouse did not constitute battery or extreme cruelty. The director applied the proper standard when determining that the petitioner had not submitted probative testimony or other evidence establishing he had been subjected to battery or extreme cruelty as that term is defined in the statute, regulation, and case law. Counsel's assertions on appeal are insufficient to

overcome the director's decision on this issue. Similarly, the petitioner's spouse's statement that the petitioner loved her and the USC's spouse's mother's knowledge of the wedding, and the petitioner's explanation for the lack of evidence of commingling of assets have been considered by the director. Counsel's disagreement with the director's determination that the petitioner had not established he entered into the marriage in good faith is insufficient to overcome the director's decision on this issue. Further, counsel does not assert and the record does not demonstrate that the petitioner entered into the marriage in good faith with clear and convincing evidence, the applicable standard pursuant to section 204(g) of the Act.¹

¹ Section 204(g) of the Act states:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act states: *Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception.* –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner

Upon review, counsel for the petitioner fails to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding. The record on appeal does not include evidence or argument sufficient to overcome the director's determination that the petitioner did not establish: he was subjected to battery or extreme cruelty perpetrated by the USC spouse; he married the USC spouse in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act; and that he qualified for the bona fide marriage exemption to the bar set out in section 204(g) of the Act. Accordingly, the appeal must be summarily dismissed pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v).

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. The petition remains denied.

provides clear and convincing evidence that the marriage is bona fide.

In this matter, the petitioner was placed in removal proceedings on June 6, 2008 and married the claimed abusive USC spouse on July 24, 2008, while in removal proceedings. The record does not show that the petitioner resided outside the United States for a 2-year period beginning after the date of the marriage.