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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 7090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



39

DATE:

Office: VERMONT SERVICE CENTER

File:

JUL 05 2012

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, (“the director”) 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 she had resided with the claimed abusive USC or that she had entered into the marriage in good faith. The director also found that as the petitioner had entered into the marriage while in removal proceedings, she was also subject to section 204(g) of the Act.

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 December 5, 2011, checking the box indicating that she would submit a supplemental brief and/or additional evidence within 30 days. To date no additional brief or evidence in support of the instant Form I-290B has been submitted. The record is considered complete. Counsel asserts on the Form I-290B that the director made numerous errors in fact and law and abused his discretion in denying the petition. Counsel contends that the petitioner has established that she resided with the claimed abusive USC and she entered into the marriage in good faith by clear and convincing evidence.

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. We find no error in the director’s ultimate determination that the petitioner has not established that she resided with the claimed abusive USC or that she entered into the marriage in good faith. We also find that as the petitioner failed to establish that she entered into marriage with the claimed abusive USC in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has also failed to demonstrate that she qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, we concur with the director’s decision that section 204(g) of the Act also requires the denial of this petition.

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. 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.