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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



B9

DATE:

JUL 13 2012

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 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 in accordance with the instructions on 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: he had resided with the USC spouse; he had been subjected to battery or extreme cruelty perpetrated by the USC spouse; or he had entered into the marriage in good faith.

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 21, 2011, checking the box indicating that she would submit a supplemental brief and/or additional evidence within 30 days. To date, no additional information has been received. The record is considered complete. On the Form I-290B, counsel asserts that the evidence submitted demonstrates that the petitioner resided with the USC spouse. Counsel contends that the finding of battery or extreme cruelty is a clinical determination and as such, the director erroneously discounted the evaluation submitted by [REDACTED] a licensed social worker. Counsel implies that the director’s observation that the petitioner was in an unhealthy relationship but had not demonstrated that he had been subjected to extreme cruelty does not pass a liberal reading of United States Citizenship and Immigration Services (USCIS) definitions. Counsel avers that the director did not consider the bank statements submitted when determining that the petitioner had not established he had 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. The petitioner in this matter did not provide detailed probative information in his statements regarding his claimed joint residence with the USC spouse, his claim that he had been subjected to battery or extreme cruelty as those terms are defined in the statute, regulations, and pertinent case law, or his intent when entering into the marriage. For example, the petitioner does not describe the claimed joint residence, the joint home furnishings, the couple’s neighbors, or any of the couple’s daily routines within the residence. Similarly, the petitioner does not provide probative, consistent testimony or information regarding the surrounding circumstances of the alleged abusive incidents that is sufficient to ascertain that the petitioner was subjected to behavior that constitutes battery or extreme cruelty as that term is defined in the statute, regulation, and case law. Likewise, the petitioner fails to supply the requisite detail of his courtship, wedding, marriage, and subsequent life together with the USC spouse sufficient to ascertain his intent when entering into the marriage.

We find no error in the director's ultimate determination that the petitioner's testimony, the testimony of others submitted on his behalf, and the limited documentation submitted failed to establish that the petitioner jointly resided with the USC spouse or that he entered into the marriage in good faith. Similarly, although the director's use of the terms "unhealthy relationship" and "marital tensions and incompatibilities" was unnecessary, we find no error in his ultimate determination that the behavior of the petitioner's spouse, as generally described by the petitioner, [REDACTED], and the other individuals who submitted statements on his behalf, did not constitute extreme cruelty as that term is set out in the statute, regulations, and pertinent case law.

Neither counsel nor the petitioner specifically identifies 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 his joint residence with the USC spouse, he was subjected to battery or extreme cruelty perpetrated by the USC spouse, or that he married the USC spouse in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) 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.