

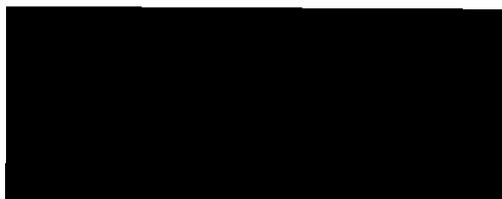
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

DATE: Office: VERMONT SERVICE CENTER

JUL 17 2012

FILE:



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 been subjected to battery or extreme cruelty perpetrated by the USC spouse.

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 March 5, 2012, checking the box indicating he would submit a supplemental brief and/or additional evidence within 30 days. On April 3, 2012, counsel submitted previously provided evidence; no new or additional information was included in the evidence received. The record is considered complete. On the Form I-290B, counsel for the petitioner asserts that the director failed to exercise proper discretion which would have rendered a favorable decision in this matter. Counsel contends that the petitioner clearly demonstrated that he was subjected to battery or extreme cruelty perpetrated by his USC spouse.

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 personal statement that demonstrated his USC spouse’s conduct constituted battery or extreme cruelty as those terms are defined in the statute, regulations, and pertinent case law. Although the petitioner referenced being slapped on one occasion and stated generally that his USC spouse punched or hit him on the arm on another occasion, he does not provide sufficient probative testimony to ascertain the actuality of the alleged incidents. Moreover, he does not describe specific incidents and the surrounding circumstances of those incidents in sufficient descriptive detail to conclude that he was subjected to battery or to conduct that is comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. As noted by the Ninth Circuit Court of Appeals, “[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness.” See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)).

Although the director's opinion that the petitioner experienced only the "marital difficulties" common in many marriages was unnecessary, we find no error in his ultimate decision. The behavior of the petitioner's spouse, as generally described by the petitioner and the other individuals who submitted statements on his behalf, do not demonstrate that the petitioner was subjected to battery or conduct constituting extreme cruelty as that term is set out in the statute, regulation, and pertinent case law. The petitioner does not specifically identify 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. 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.