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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**

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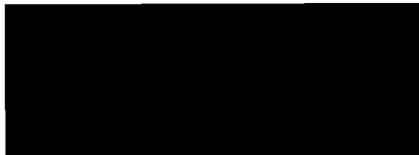
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Date: **MAR 14 2012** Office: VERMONT SERVICE CENTER FILE: 

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:

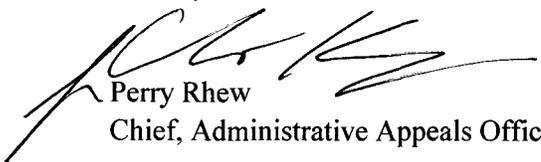


INSTRUCTIONS:

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 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 the \$630 fee. 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.

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 states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . 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].

In this case, the director initially denied the petition on January 12, 2010 because the record did not establish that the petitioner was subjected to battery or extreme cruelty during his marriage. In its April 7, 2011 decision on appeal, the AAO determined that the petitioner had not established his entry into the marriage in good faith, the requisite battery or extreme cruelty, joint residence and his good moral character. However, the AAO remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the former regulation at 8 C.F.R. § 204.2(c)(3)(ii) (2006).

Upon remand, the director issued a NOID on May 19, 2011 which informed the petitioner that he had not submitted sufficient evidence to establish his entry into the marriage in good faith, the requisite battery or extreme cruelty, joint residence and his good moral character. In response, the petitioner submitted as additional evidence a police clearance, a letter from a clinical psychologist, a police report, medical records and additional statements from four of his friends. The director found that the police clearance established that the petitioner is a person of good moral character, but the remaining evidence was insufficient to establish the petitioner's eligibility on the other grounds of denial. Accordingly, the director denied the petition on October 3, 2011 on the ground cited in the NOID and certified his decision to the AAO for review. In his Notice of Certification, the director informed the petitioner, through counsel, that he could submit a brief to the AAO within 30 days after service of the certified decision. To date, the AAO has received nothing further from the petitioner.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in our prior decision, incorporated here by reference. As discussed by the director, the statements from the petitioner's friends submitted in response to the NOID describe incidents of physical abuse by the petitioner's spouse, which were never discussed by the petitioner in his affidavit. The director correctly found that the letter from clinical psychologist [REDACTED] is without probative value because it simply states that the records of the petitioner's psychological treatment are inactive and unavailable. The director also correctly found that the police report and medical documentation pertaining to an incident of battery against the petitioner are without probative value because the incident occurred almost two years after the petitioner was divorced from his wife and they do not mention the petitioner's wife as the perpetrator. Accordingly, the October 3, 2011 decision of the director denying the petition is affirmed. The petitioner has not demonstrated his entry into the marriage in good faith, the requisite battery or extreme cruelty and joint residence. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must remain denied.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not sustained that burden.

ORDER: The director's decision of October 3, 2011 is affirmed. The petition remains denied.