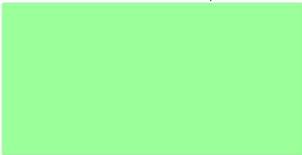


(b)(6)

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



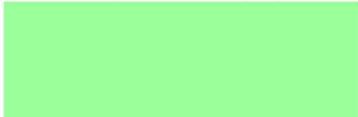
JAN 04 2013

Date: Office: VERMONT SERVICE CENTER FILE: 

IN RE: 

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:

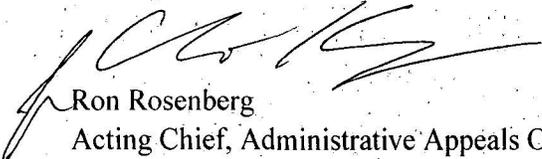


INSTRUCTIONS:

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 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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director 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).

Here, the director initially denied the petition on August 31, 2005, because the petitioner did not establish the requisite good faith entry into the marriage, joint residence or that he was battered or subjected to extreme cruelty by his spouse. In the March 30, 2009 decision on appeal, the AAO concurred with the director's determination but 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) (as in effect at the time the petition was filed). Upon remand, the director issued a NOID on February 23, 2010, which informed the petitioner that he had not submitted sufficient evidence to meet the good faith, joint residence and battery or extreme cruelty requirements. Counsel responded to the NOID with a letter and updated affidavits and evidence. The director denied the petition on August 20, 2012, and certified the decision to the AAO for review.

In our prior decision, incorporated here by reference, we fully discussed the pertinent facts and relevant evidence submitted below. Accordingly, we will only address the evidence submitted after that decision was issued. In response to the NOID, counsel submitted an additional affidavit from the petitioner, photographs of the petitioner and his wife's wedding, two affidavits from the petitioner's friends, a sworn statement regarding her address from the petitioner's wife, bank statements and a Form W-2. Counsel also submitted a copy of a request for an Order of Protection against the petitioner's wife and a letter from a psychiatrist.

The director correctly assessed the evidence submitted in response to the NOID. The petitioner's affidavit failed to provide probative details regarding battery or extreme cruelty, his intentions in entering into the marriage, and joint residence with his wife. In his affidavit, [REDACTED] stated that the petitioner's wife pushed him to the ground and spilled a drink on him, and that she attacked the petitioner at their wedding. Mr. [REDACTED] failed to mention any of these details in his previous statements, and the petitioner himself did not mention any of these incidents in any of his statements. Mr. [REDACTED] also failed to provide any information regarding the petitioner's intentions in entering into the marriage or the petitioner and his wife's joint residence. [REDACTED] claimed in her affidavit that the petitioner's wife pushed her away at their wedding and that the petitioner's wife argued with the petitioner. The behavior she described does not constitute battery or extreme cruelty against the petitioner. She also noted that the petitioner loved his wife and was attentive on special days, but she failed to provide any probative details regarding the

petitioner's intentions in entering into the marriage or joint residence. Similarly, [REDACTED] a psychiatrist, confirmed that he treated the petitioner for depression from May 2004 to October 2005. The psychiatrist briefly conveyed the petitioner's report of verbal and physical abuse during his marriage, but he did not discuss any specific incident of battery or extreme cruelty.

The petitioner's wife's affidavit, mail addressed to the petitioner's wife, and the petitioner's Form W-2 are not sufficient to overcome the discrepancies in the marital addresses and residences as noted in the previous AAO decision. The photographs of the petitioner with his wife on a few unspecified occasions are not accompanied by any explanation of their significance. Lastly, the copy of the Family Offense Petition is based solely on the petitioner's account of events and although the petitioner stated that this petition was granted, he did not provide any evidence that the order was actually issued.

The Notice of Certification informed the petitioner that he had 30 days to submit a brief to the AAO. Counsel submitted a letter in which he explains the evidence submitted in response to the NOID and a brief affidavit from the petitioner explaining address discrepancies. The letter submitted and the petitioner's affidavit do not overcome the deficiencies noted in the previous AAO decision, nor do they provide any additional relevant information or details that show that the petitioner entered into the marriage in good faith, resided with his spouse, or was subjected to battery or extreme cruelty by his spouse. As such, the petitioner has not demonstrated his entry into the marriage in good faith, joint residence, or the requisite battery or extreme cruelty.¹ The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Accordingly, the August 20, 2012, decision of the director denying the petition will be affirmed.

The petition will remain denied for the reasons stated above, with each considered an independent and alternative basis for denial. 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). Here, that burden has not been met.

ORDER: The director's decision of August 20, 2012, is affirmed. The petition remains denied.

¹ The March 19, 2010, letter from [REDACTED] notes that the petitioner has remarried. If the petitioner has in fact remarried, he also has not established a qualifying relationship with his alleged abuser and his eligibility for immediate relative classification based on such relationship because he remarried during the pendency of this petition. See 8 C.F.R. § 204.2(c)(1)(i)(B), (ii).