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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090

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FILE:

[REDACTED]
EAC 07 226 51464

Office: VERMONT SERVICE CENTER

Date:

MAY 15 2009

IN RE:

Petitioner: [REDACTED]

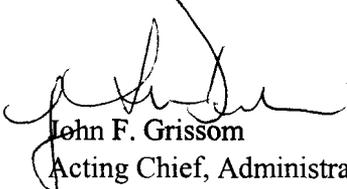
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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.

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).

The Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant was filed July 27, 2007. The petitioner did not offer any statements or evidence that he had been subjected to battery or extreme cruelty perpetrated by his spouse. On March 18, 2008, the director issued a request for further evidence (RFE) that specifically included a request for evidence that demonstrated that the petitioner had been subjected to battery or extreme cruelty perpetrated by his spouse. The petitioner provided a response to the RFE that included evidence on several different issues the director raised, but did not provide any statements or other evidence that he had been subjected to battery or extreme cruelty by his United States citizen spouse. On July 16, 2008, the director denied the petition finding that the record did not include evidence of the requisite abuse.

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal. Counsel repeats the director's decision verbatim and adds that to comply with section 204(a)(1)(5) he is enclosing five affidavits related to the abuse perpetrated by the petitioner's spouse. In each of the five affidavits, each affiant reports: that he has seen the petitioner's spouse insult and berate the petitioner; that the petitioner's spouse is often drunk at parties and reunions and yells at the petitioner; that on or about June 17, 2004 at a party at the petitioner's house, the petitioner's spouse tried to kick the bathroom door down when the petitioner was in the bathroom and that the petitioner was forced to stay in the bathroom until she left; that on or about March 31, 2005, a group of friends were at a discotheque in Manhattan when the petitioner's spouse yelled at the petitioner and slapped his face; and on or about October 18, 2006 when leaving the Catholic Church in the Bronx, New York, the petitioner's spouse called the petitioner a bad name. Each affiant states that he has been a witness to the psychological abuse made by the petitioner's spouse to him.

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."

The petitioner in this matter has not provided any personal statements that he was subjected to any sort of abuse perpetrated by his spouse. Only on appeal does the petitioner provide affidavits from acquaintances that provide information regarding purported abuse. The AAO observes that where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, the petitioner should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. The AAO notes, as an observation only, that the affidavits submitted are identical in format and text and are different only in the identity of the affiant and the signature of the affiant. Such identical statements, obviously prepared by one individual, cast doubt on the legitimacy of each affidavit and the statements the affiants made therein.

The record on appeal does not include any probative evidence to demonstrate that the petitioner was subjected to acts that constitute battery or extreme cruelty perpetrated by the petitioner's spouse. The record on appeal does not contain any erroneous conclusions of law or statements of fact made by the director as a basis for the appeal. The AAO is without further evidence or argument to evaluate regarding the petitioner's failure to establish an essential element of eligibility for this benefit.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

The petition will be denied for the stated reasons set out in the director's decision, with each considered as an independent and alternative basis for denial. 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.