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U.S. Citizenship
and Immigration
Services

B9

FILE: [REDACTED]
EAC 05 211 52312

Office: VERMONT SERVICE CENTER

Date: AUG 02 2007

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:
[REDACTED]

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The March 9, 2007 decision of the director will be affirmed and the petition will be 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 further 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].

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Australia who indicates that she entered the United States in March 2005. On April 30, 2005, the petitioner married B-M-¹ a U.S. citizen, in Ohio. The petitioner filed this Form I-360 on July 21, 2005. On September 28, 2005, the director issued a notice explaining the insufficiency of the relevant evidence submitted with the petition and asked the petitioner to submit, *inter alia*, additional evidence that she entered into her marriage in good faith. On February 14, 2006, the director denied the petition because the record did not establish that the petitioner entered into her marriage in good faith. The petitioner timely appealed.

On appeal, the AAO remanded the case because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii). On appeal, the AAO further determined that the petitioner failed to establish that she had a qualifying relationship as the spouse of a United States citizen pursuant to section 204(a)(1)(A)(iii) of the Act.

Upon remand, the director issued a NOID on October 30, 2006 in accordance with the AAO's September 8, 2006 decision. Neither counsel nor the petitioner responded to the NOID. Accordingly, the director denied the petition on March 9, 2007 for lack of the requisite evidence regarding the petitioner's good faith marriage and qualifying relationship with a U.S. citizen. The director certified his decision to the AAO for review and notified the petitioner that she could submit a brief to the AAO

¹ Name withheld to protect individual's identity.

within 30 days of service of the director's decision. To date, the AAO has received nothing further from the petitioner or counsel.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the September 8, 2006 decision of the AAO, which is incorporated here by reference. The petitioner has submitted no further brief or evidence since that decision was issued. Accordingly, the petitioner has not established that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, and that she had a qualifying relationship as the spouse of a United States citizen, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, 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. Accordingly, the March 9, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The March 9, 2007 decision of the director is affirmed.