

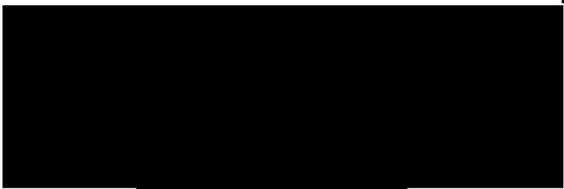
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FILE:

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Office: VERMONT SERVICE CENTER

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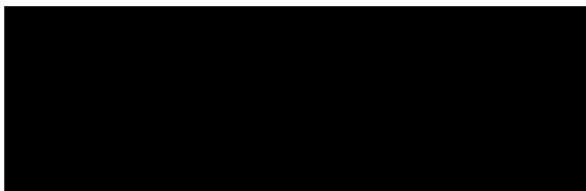
IN RE:

Petitioner:



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.

  
for 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 June 4, 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, a native and citizen of Belize, married G-W-,\* a United States citizen, on August 5, 1995, in Chicago, Illinois. The petitioner filed the instant Form I-360 self-petition on July 5, 2005. After conducting a preliminary review of the evidence submitted by the petitioner at the time of filing, the director found that the petitioner had failed to establish her prima facie eligibility and on July 19, 2005, requested the petitioner to submit evidence of her good moral character. On September 12, 2005, the director issued a Request for Evidence (RFE) for further evidence of, *inter alia*, the petitioner's residence with her spouse, her good moral character, and her good faith marriage. The petitioner responded with additional evidence on November 18, 2005. The director denied the petition on January 24, 2006, finding that the petitioner failed to establish that she resided with her spouse, that she is a person of good moral character, and that she entered into the marriage in good faith. The petitioner, through counsel, submitted a timely appeal.

On appeal, the AAO concurred with the findings of the director but 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). Upon remand, the director issued a NOID on December 27, 2006 in accordance with the AAO's November 16, 2006 decision. Neither counsel nor the petitioner responded to the NOID. Accordingly, the director denied the petition on June 4, 2007 for lack of the requisite residence, good moral character, and good faith marriage. The director certified his decision to the AAO for review and notified the petitioner that she could submit a brief to the AAO within 30 days of service of the director's decision. To date, the AAO has received nothing further from the petitioner or counsel.

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\* Name withheld to protect individual's identity.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the November 16, 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 resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act, that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act, and that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Consequently, the petitioner is 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 June 4, 2007 decision of the director is affirmed and the petition is denied.

**ORDER:** The petition is denied. The June 4, 2007 decision of the director is affirmed.