

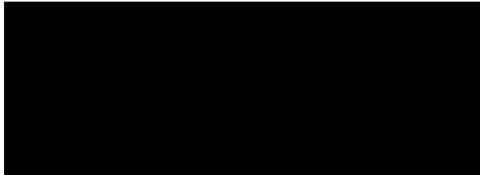


U.S. Citizenship
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Services

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FILE:

EAC 05 001 53193

Office: VERMONT SERVICE CENTER

Date: AUG 24 2007

IN RE:

Petitioner:



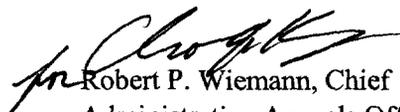
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


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 December 18, 2006 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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat them here as necessary. The director initially denied the petition on August 16, 2005, based upon the finding that the petitioner failed to establish that she entered into her marriage in good faith. On appeal, the AAO concurred with the finding 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). Additionally, the AAO indicated that the director should further consider whether the petitioner had established the requisite abuse. Upon remand, the director issued a NOID on June 26, 2006 notifying the petitioner that she failed to establish that she entered into her marriage in good faith.¹ The petitioner failed to respond to the NOID. Accordingly, the director denied the petition on December 18, 2006, finding that the petitioner failed to establish that she entered into her marriage in good faith. The director certified her decision to the AAO for review and notified the petitioner, through counsel, 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.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the May 22, 2006 decision of the AAO, which is incorporated here by reference. Neither the petitioner nor counsel has submitted a brief or further 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. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

¹ Although the AAO's remand decision indicated that the director should give further consideration to the issue of the requisite abuse, the director did not include this issue in her NOID. It is unclear whether this was intentional or was an oversight. As the denial can stand solely on the petitioner's failure to establish her good faith entry into marriage we will not further discuss the issue of the claimed abuse here.



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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 December 18, 2006 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The December 18, 2006 decision of the director is affirmed.