



U.S. Citizenship
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FILE: [REDACTED]
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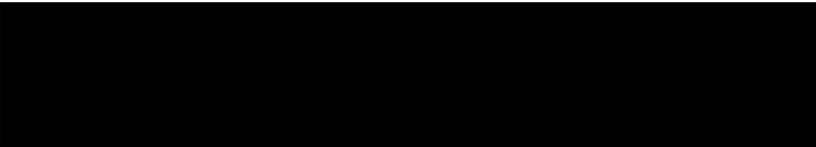
Office: VERMONT SERVICE CENTER

Date: **AUG 27 2007**

IN RE: Petitioner: [REDACTED]

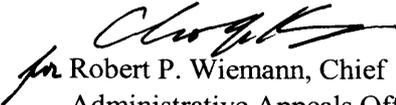
PETITION: Petition for Immigrant Battered Child Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

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 December 19, 2006 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iv) of the Act provides that an alien who is the child of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she is a person of good moral character, is eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act, that he or she resides or has resided with the citizen parent, and that he or she was battered or subjected to extreme cruelty perpetrated by the citizen parent.

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. On June 29, 2005, the director initially denied the petition based upon the finding that the petitioner failed to establish that he had been battered by or subjected to extreme cruelty by his U.S. citizen stepfather. 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). Upon remand, the director issued a NOID on July 19, 2006 in accordance with the AAO's April 14, 2006 decision. The petitioner failed to respond to the NOID. Accordingly, the director denied the petition on December 19, 2006, finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his citizen stepfather. The director certified her decision to the AAO for review and notified the petitioner that he 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 April 14, 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 he was battered by or subjected to extreme cruelty by his citizen parent, as required by section 204(a)(1)(A)(iv) of the Act. Consequently, the petitioner is ineligible for immigrant classification and his petition must be denied.

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 19, 2006 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The December 19, 2006 decision of the director is affirmed.