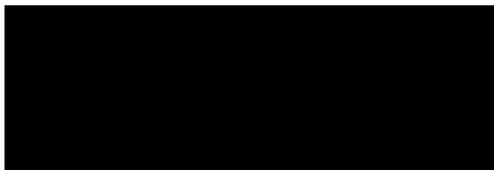




U.S. Citizenship
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Services

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prevent clearly unwarranted
invasion of personal privacy



B9

FILE: [REDACTED]
EAC 04 115 54228

Office: VERMONT SERVICE CENTER

Date: DEC 18 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.

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 matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(a)(iv) (2007), states, in pertinent part:

An alien who is the child of a citizen of the United States . . . and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title [section 201(b)(2)(A)(i) of the Act], and who resides, or has resided in the past, with the citizen parent may file a petition . . . under this subparagraph for classification of the alien . . . under such section if the alien demonstrates . . . that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. . . .

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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].

In this case, the director initially denied the petition on February 9, 2005 for failure to establish that the petitioner was subjected to battery or extreme cruelty by his U.S. citizen stepfather, that he resided with his stepfather and that he was a person of good moral character. In its March 24, 2006 decision on appeal, the AAO concurred with the director's determinations, but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Upon remand, the director issued a NOID on July 26, 2006 which informed the petitioner, through counsel, that he had not submitted sufficient evidence of the requisite abuse, residence and good moral character. Neither counsel nor the petitioner responded to the NOID. Accordingly, the director denied the petition on December 19, 2006 on the grounds cited in the NOID and certified the decision to the AAO for review. The director notified the petitioner, through counsel, that he could submit a brief to the AAO within 30 days after service of the decision. To date, nearly a year later, the AAO has received nothing further from counsel or the petitioner.

The December 19, 2006 decision of the director denying the petition is affirmed. The relevant evidence submitted below was discussed in the March 24, 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 the requisite battery or extreme

cruelty, residence and good moral character. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iv) of the Act and his petition must be denied.

The denial of the petition will be affirmed 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 (2007). The petitioner has not sustained that burden.

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