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FILE: [REDACTED]
EAC 04 057 53260

Office: VERMONT SERVICE CENTER

Date: DEC 20 2007

IN RE: Petitioner: [REDACTED]

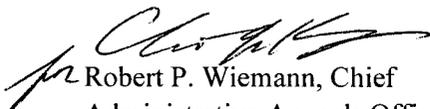
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



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 July 26, 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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. The director initially denied the petition on April 27, 2005, finding that the petitioner did not respond to the director's Request for Evidence (RFE) and, therefore, failed to establish her eligibility. The director affirmed his decision in a subsequent motion to reopen filed by the petitioner and specifically found that the petitioner failed to establish that she resided with her spouse and that she entered into her marriage in good faith. On appeal, the AAO concurred with the findings of the director regarding the petitioner's failure to establish that she resided with her spouse and that she entered into her marriage in good faith. In addition, the AAO found that the petitioner failed to establish that she had a qualifying relationship as the spouse of a United States citizen. However, 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).

Upon remand, the director issued a NOID on September 18, 2006, in accordance with the AAO's May 31, 2006 remand decision. The petitioner, through counsel, responded to the director's NOID by providing copies of documents that were previously submitted and considered by the Service. In a decision dated July 26, 2007, the director found that the petitioner failed to establish that she resided with her spouse and that she entered into her marriage in good faith. As it relates to the issue of the petitioner's qualifying marriage as the spouse of a United States citizen, the director stated that this "denial ground was included in the NOID in error, as the petitioner had already established eligibility under this requirement." 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, no further brief or evidence has been submitted. Accordingly, the record is considered to be complete as it now stands.

Upon review, we concur with the director's determinations. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has not submitted any further brief or evidence since the issuance of that decision. Accordingly, although we find the record sufficiently establishes that the petitioner has a qualifying relationship as the spouse of a United States citizen, she has failed to establish that she resided with her spouse and that she entered into her marriage in good faith. 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 July 26, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The July 26, 2007 decision of the director is affirmed.