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U.S. Citizenship
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FILE: [REDACTED]
EAC 05 094 53437

Office: VERMONT SERVICE CENTER

Date: DEC 20 2007

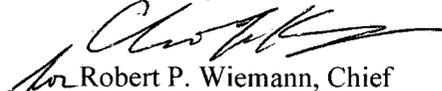
IN RE: Petitioner: [REDACTED]

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:
[REDACTED]

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 October 11, 2007 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iv) of the Act provides, in pertinent part:

An alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under 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 with the [Secretary of Homeland Security] under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the [Secretary of Homeland Security] 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 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 July 29, 2005, finding that the petitioner did not meet the statutory definition of a child because she was over the age of 21 at the time of filing. On appeal, the AAO concurred with the director's determination and found several issues, beyond the decision of the director, that further precluded eligibility. Specifically, the AAO found that the petitioner also did not meet the statutory definition of a child because she was over the age of eighteen at the time her mother married her stepfather and that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her citizen stepfather, and that she resided with her citizen stepfather. However, the AAO remanded the case on April 19, 2006 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 April 17, 2007, in accordance with the AAO's remand decision. The petitioner failed to respond to the director's NOID. Accordingly, the director denied the petition on October 11, 2007, based on the grounds cited in the NOID. 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.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has submitted no further brief or evidence since the issuance of that decision. Accordingly, the petitioner has not established that she is the child of a United States citizen and that she was battered or subjected to extreme

cruelty by her citizen stepfather and that she resided with her citizen stepfather. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iv) 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 October 11, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The October 11, 2007 decision of the director is affirmed.