

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

Bq

PUBLIC COPY

[Redacted]

FILE: [Redacted]
WAC 03 126 52416

Office: VERMONT SERVICE CENTER

Date: DEC 20 2007

IN RE: Petitioner:

[Redacted]

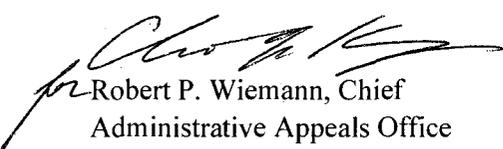
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 The September 7, 2007 decision of the director will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 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].

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 July 19, 2005, finding that the petitioner failed to establish that she resided with her lawful permanent resident spouse, that she was battered or subjected to extreme cruelty by her spouse during their marriage, that she is a person of good moral character, and that she entered into her marriage in good faith. On appeal, although the petitioner submitted additional evidence to support her claim of abuse, the AAO found the record was insufficient to establish the petitioner's remaining claims that she resided with her spouse, is a person of good moral character, and entered into her marriage in good faith. In addition, the AAO found that the evidence submitted on appeal indicated that the petitioner was not married to her spouse at the time of filing. Specifically, the AAO noted the submission of court documents which showed that the petitioner's spouse was convicted of battery on his "former spouse/fiancé" for an incident that occurred on January 24, 2000, more than three years prior to the filing of the petition. 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 May 30, 2006. The director received no response to the NOID, denied the petition, and certified the decision to the AAO. In his decision, the director 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 find that the NOID and the director's September 7, 2007 decision were not properly issued to the petitioner and the case must again be remanded to the director for further action.

The director's NOID was issued to the petitioner to the attention of [REDACTED] at an address in Torrance, California. Although Mr. [REDACTED] submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative, on behalf of the petitioner and assisted the petitioner in preparing her Form I-360, Mr. [REDACTED]

has not established that he is a licensed attorney or an accredited representative authorized to undertake representation on the petitioner's behalf, in accordance with the regulation at 8 C.F.R. § 292.1. As such, any recognition of this individual and subsequent notice to him on behalf of the petitioner was improper.¹

In addition, we find that the director's NOID did not provide clear notice that the petitioner was also required to establish that she had a qualifying relationship as the spouse of a lawful permanent resident at the time of filing and that she is eligible for preference classification based upon that relationship due to the fact that evidence in the record indicates that the petitioner was not married to her spouse in the two-year period prior to the filing of her petition.

As it does not appear that the petitioner was provided with clear notice of all of the deficiencies in the record in the NOID and because the NOID and final decision were improperly issued, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a NOID as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

¹ On the Form G-28, Mr. Franco indicated that he was a representative of "INS General Information" and that he was "bonded" to "Manago Immigration [illegible]. We note that neither of these organizations appear on the Executive Office for Immigration Review's "Recognized Organizations and Accredited Representatives Roster." Pursuant to 8 C.F.R. § 292.1, persons entitled to represent individuals in matters before the Department of Homeland Security ("DHS"), and the Immigration Courts and Board of Immigration Appeals ("Board"), or the DHS alone, include, among others, accredited representatives. Any such representatives must be designated by a qualified organization, as recognized by the Board. A recognized organization must apply to the Board for accreditation of such a representative or representatives. The rules respecting qualification of organizations, requests for recognition, withdrawal of recognition, and accreditation of representatives, may be found at 8 C.F.R. § 292.2.