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U.S. Citizenship
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Services

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[REDACTED]

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

DEC 27 2007

EAC 05 126 53366

IN RE:

Petitioner:

[REDACTED]

PETITION:

Petition for Immigrant Abused 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:

[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.

Robert P. Wiemann

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.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

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 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 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 November 3, 2005 for failure to establish the requisite battery or extreme cruelty. In its June 23, 2006 decision on appeal, incorporated here by reference, 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 August 2, 2006, which informed the petitioner that she had failed to establish the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence. The director considered the evidence submitted in response to the NOID, found it insufficient and consequently denied the petition on December 19, 2006 on the ground cited in the NOID. In her Notice of Certification, the director informed the petitioner, through counsel, that she could submit a brief to the AAO within 30 days after service of the certified decision. To date, over a year later, the AAO has received nothing further from counsel or the petitioner.

As our prior decision is a matter of record, we will only discuss the evidence submitted after that decision was issued, in response to the director's NOID. That evidence is:

- A second affidavit, dated September 29, 2006, purportedly of the petitioner's friend,

- A second affidavit, dated September 29, 2006, purportedly of the petitioner's sister, [REDACTED] and [REDACTED]
- A printout of an article from Wikipedia entitled "Battered Woman Defence."

As noted by the director, the signatures of Ms. [REDACTED] and Ms. [REDACTED] on their September 29, 2006 affidavits differ significantly from their signatures on their affidavits submitted below. The unexplained discrepancies in their signatures seriously detract from the credibility of the more recent affidavits. In the September 29, 2006 affidavits, Ms. [REDACTED] further discusses the petitioner's depression and withdrawal after her marriage and Ms. [REDACTED] discusses an incident on Thanksgiving in 2003, which the petitioner discussed in her affidavit submitted below. Neither Ms. [REDACTED] nor Ms. [REDACTED] explains her failure to include the supplementary information in their prior affidavits. Moreover, the supplementary information alone, even if from fully credible sources, attests to the petitioner's social withdrawal and marital conflict, but does not establish the requisite battery or extreme cruelty.

The Wikipedia article is similarly insufficient to establish the petitioner's claim. The article discusses a theory of legal defense in criminal law for survivors of domestic violence. While counsel cites the article as supporting the petitioner's lack of documentation of and failure to report her husband's purported abuse, the article actually discusses the history and problematic use of the battered woman syndrome as a criminal defense. The article does not establish that the requisite abuse occurred in the petitioner's case.

Accordingly, the December 19, 2006 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that her husband subjected her to battery or extreme cruelty during their marriage and she is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.