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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [REDACTED]
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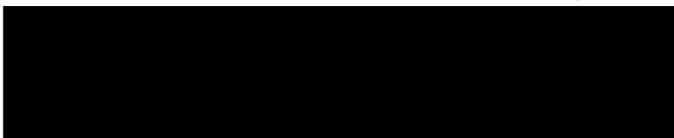
Office: VERMONT SERVICE CENTER

Date: DEC 28 2007

IN RE: Petitioner: [REDACTED]

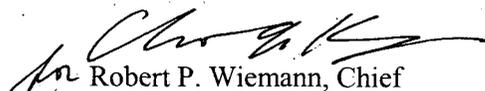
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


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 January 4, 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 them here as necessary. The director initially denied the petition on October 27, 2005, finding that the petitioner failed to establish that he had a qualifying relationship as the spouse of a United States citizen at the time his petition was filed. On appeal, the AAO concurred with the director's determination and in addition found that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his citizen spouse during their marriage. 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 August 10, 2006, and afforded the petitioner an opportunity to submit evidence that he had a qualifying relationship as the spouse of a United States citizen and that he was battered or subjected to extreme cruelty by his spouse during their marriage. The petitioner failed to respond to the director's NOID. Accordingly, the director denied the petition on January 4, 2007, based on the grounds cited in the NOID. The director certified her decision to the AAO for review and notified the petitioner that he 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 not submitted a brief or further evidence after issuance of that decision. Accordingly, the petitioner has not established that he had a qualifying relationship as the spouse of a United States citizen and that he was battered or subjected to extreme cruelty by his citizen spouse during their marriage. In addition, we note beyond the previous decisions of the director and the AAO, the petitioner has also failed to establish that he is eligible for immediate relative classification based upon a qualifying relationship. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his 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 January 4, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The January 4, 2007 decision of the director is affirmed.