

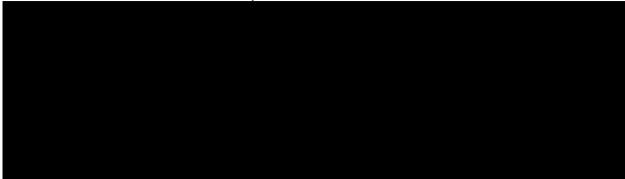
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FILE: [REDACTED]
EAC 05 178 52664

Office: VERMONT SERVICE CENTER

Date: DEC 31 2007

IN RE: Petitioner: [REDACTED]

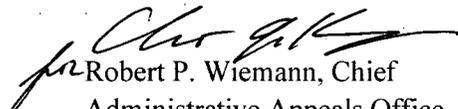
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 March 16, 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 January 4, 2006, finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her citizen 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, the AAO concurred with the finding of the director but remanded the case on September 14, 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 November 6, 2006, in accordance with the AAO's remand decision. The petitioner failed to respond to the NOID and the director denied the petition on March 16, 2007 based on the grounds cited in the NOID. The director certified his decision to the AAO for review and notified the petitioner, through counsel, that she could submit a brief to the AAO within 30 days of service of the director's decision.

Although the AAO has received no further brief or evidence relevant to the petitioner's claim of abuse, the petitioner's counsel of record submitted a letter dated November 7, 2007, indicating the petitioner's instruction "to withdraw the current I-360 visa petition in this case." The regulation at 8 C.F.R. § 103.2(b)(6) states that a petitioner may withdraw a petition "at any time until a decision is issued by the Service" As previously noted, the director's decision on the Form I-360 was issued on January 4, 2006. We note that the petitioner could also have withdrawn her appeal pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(ix) before the AAO issued a decision on the appeal. However, as the case is now before us on certification by the director, there is no pending appeal that may be withdrawn, and a decision must be issued on the certification.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the AAO's remand decision, which is incorporated here by reference. The petitioner has not

submitted a brief or further evidence since that decision was issued. Accordingly, the petitioner has not established that she was battered or subjected to extreme cruelty by her citizen spouse during their marriage, that she is a person of good moral character 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 March 16, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The March 16, 2007 decision of the director is affirmed.