

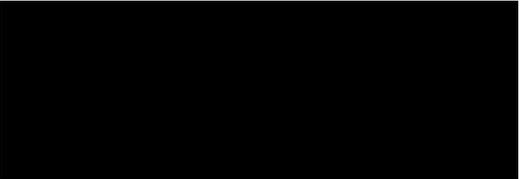
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U.S. Citizenship
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FILE: [REDACTED]
EAC 04 024 50101

Office: VERMONT SERVICE CENTER

Date: JAN 19 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, initially approved the immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On January 19, 2005, the director approved the petition for immigrant classification of the petitioner under to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien subjected to battery or extreme cruelty by his United States citizen spouse.

On January 27, 2006, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition because the petitioner did not demonstrate the requisite battery or extreme cruelty and good-faith marriage. The petitioner did not respond. Accordingly, the director revoked the approval of the petition on July 26, 2006.

The petitioner, through counsel, timely appealed. On appeal, counsel claims that neither he nor the petitioner received the NOIR and submits affidavits from the petitioner and the petitioner's former counsel in support of this claim.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title." A director may revoke the approval of a petition on notice "when the necessity for the revocation comes to the attention of this Service." 8 C.F.R. § 205.2(a).

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).

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Georgia who entered the United States on September 28, 1998 as a nonimmigrant visitor (B-2). On November 15, 2001, the petitioner married T-K-¹, a U.S. citizen, in New York. On April 14, 2004, the New York District Office denied the Form I-130, petition for alien relative, filed by T-K- on the petitioner's behalf due to abandonment. The petitioner filed this

¹ Name withheld to protect individual's privacy.

Form I-360 on October 31, 2003. The Vermont Service Center approved the Form I-360 self-petition on January 26, 2005.

On December 15, 2005, the petitioner was interviewed in connection with his Form I-485, application for adjustment of status, based on his approved Form I-360 self-petition. At the interview, the petitioner could not provide proof of his marriage to T-K-, was unable to answer basic questions regarding the basis for his Form I-360 and could not recall any details contained in affidavits submitted to support his claim of battery or extreme cruelty. The Director, Vermont Service Center ("the director") then issued the NOIR and requested the petitioner to submit further evidence of battery or extreme cruelty and of his good-faith entry into marriage with his wife. The director included a copy of the District Director's memorandum regarding the petitioner's adjustment of status interview. Counsel did not respond to the NOIR.

The Vermont Service Center mailed the decision revoking the approval of the petition to the petitioner in care of [REDACTED] the attorney representing the petitioner in connection with his Form I-485, rather than present counsel who filed the Form I-360. On appeal, Mr. [REDACTED] describes this action as "an encounter with the light of reason is a random privilege [sic]." As the Form I-360 was filed nearly three years before the revocation decision was issued and counsel failed to respond to the NOIR, the Service Center understandably sent the revocation decision to the petitioner in care of Mr. [REDACTED]. Although Mr. [REDACTED] did not represent the petitioner on his Form I-360, he was the attorney of record for the petitioner's Form I-485, the interview for which provided the basis for the revocation of the approval of the Form I-360.

On appeal, the petitioner and Mr. [REDACTED] both state that neither the petitioner nor present counsel received the NOIR. On page two of the petitioner's August 7, 2006 affidavit, he states that an affidavit from counsel attesting that counsel did not receive the NOIR is attached as "Exhibit B." The record contains no such attachment or other evidence that counsel did not receive the NOIR. The NOIR was addressed to counsel at the same address he stated on the Form I-360 and has also provided on appeal. The record contains no evidence that the NOIR was returned to the Vermont Service Center by the postal service. Accordingly, the NOIR was properly served upon the petitioner in accordance with the regulation at 8 C.F.R. § 103.5a(a).

Apart from his claim that neither he nor the petitioner received the NOIR, counsel submits no evidence and presents no legal arguments regarding the merits of the petition and the grounds for revocation. On the Form I-290B, counsel simply asserts, "Petition was meritorious since it was approved."

The regulation at 8 C.F.R. § 103.3(a)(1)(v) prescribes: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Counsel here has not specifically identified any erroneous conclusion of law or statement of fact for the appeal. Counsel provides no evidence or

legal arguments regarding the grounds for revocation of the approval of the petition. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.