



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

[REDACTED]

FILE: [REDACTED]
EAC 04 261 54036

Office: VERMONT SERVICE CENTER

Date: MAY 11 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:

[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 case 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 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 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].

In this case, the director initially denied the petition on November 8, 2005 for lack of the requisite good-faith entry into the marriage, battery or extreme cruelty and good moral character. In its June 2, 2006 decision on appeal, the AAO found that evidence submitted on appeal demonstrated that the petitioner was a person of good moral character, but the AAO concurred with the director's determination that the petitioner had not established the requisite good-faith entry into the marriage and battery or extreme cruelty. However, the AAO 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 10, 2006 which informed the petitioner that he had not submitted sufficient evidence that he entered into marriage with his wife in good faith and that during their marriage, his wife battered or subjected him to extreme cruelty. The NOID granted the petitioner 60 days to submit a response and any additional evidence. The petitioner did not respond to the NOID. Accordingly, the director denied the petition on December 18, 2006 on the grounds cited in the NOID and certified the decision to the AAO for review.

The director's Notice of Certification informed the petitioner that he had 30 days to submit a brief to the AAO. To date, nearly five months after the director issued the Notice of Certification, the AAO has received nothing further from counsel or the petitioner. Accordingly, the December 18, 2006 decision

of the director denying the petition is affirmed. The petitioner has not demonstrated that he entered into marriage with his wife in good faith and that his wife battered or subjected him to extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The denial of the petition will be affirmed 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. The petitioner has not sustained that burden.

ORDER: The director's decision of December 18, 2006 is affirmed. The petition is denied.