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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



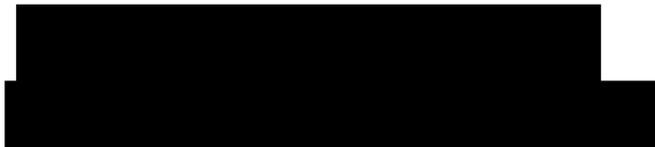
Office: VERMONT SERVICE CENTER

Date: NOV 29 2007

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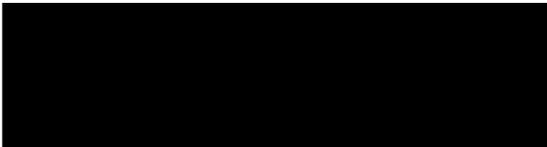
IN RE:

Petitioner:



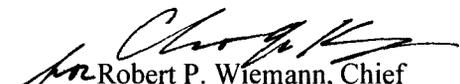
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 April 9, 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 October 18, 2005, finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage. On appeal, the AAO concurred with the finding of the director but 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 October 3, 2006, in accordance with the AAO's remand decision. The petitioner failed to respond to the NOID and the director denied the petition on April 9, 2007, based on the ground 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.

To date, although the AAO has received no further brief or evidence relevant to the petitioner's claim of abuse, the petitioner's new counsel of record submitted a letter dated October 5, 2007, stating that the petitioner's appeal "should have been withdrawn from the AAO last year and if it was not, please consider this letter as an official request to withdraw that appeal." The regulation at 8 C.F.R. § 103.3(2)(ix) states that an appeal may be withdrawn "before a decision is made." In this case, a decision was made on the petitioner's appeal on July 31, 2006. The record does not contain a request to withdraw the appeal prior to the AAO's decision. Similarly, counsel's alternative request to withdraw the appeal at this time, cannot be accommodated, as there is no appeal pending at this time. Rather, the petitioner's case is currently before us on certification by the director after issuance of our decision on appeal.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the July 31, 2006 decision of the AAO, 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. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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 April 9, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The April 9, 2007 decision of the director is affirmed.