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U.S. Citizenship  
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OCT 17 2007

FILE:



Office: VERMONT SERVICE CENTER

Date:

EAC 04 086 52129

IN RE:

Petitioner:



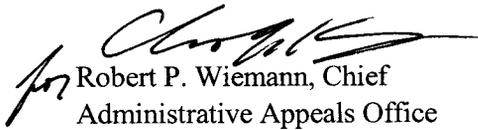
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 December 18, 2006 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 June 13, 2005, based upon the finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his 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 June 26, 2006, in accordance with the AAO's March 10, 2006 remand decision. The petitioner failed to respond to the NOID and the director denied the petition on December 18, 2006, based on the ground cited in the NOID. The director certified her decision to the AAO for review and notified the petitioner, through counsel, that he 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, counsel has submitted a letter dated January 18, 2007, indicating the petitioner's intent to withdraw the appeal. The regulation at 8 C.F.R. § 103.3(a)(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 March 10, 2006. 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 March 10, 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 he was battered by or subjected to extreme cruelty by his U.S. citizen spouse during their marriage. Consequently, the petitioner is ineligible for immigrant classification and his 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 December 18, 2006 decision of the director is affirmed and the petition is denied.

**ORDER:** The petition is denied. The December 18, 2006 decision of the director is affirmed.