

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

B9



FILE:



EAC 05 131 50845

Office: VERMONT SERVICE CENTER

Date: OCT 26 2007

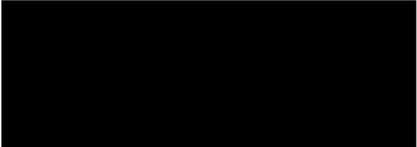
IN RE:

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.


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 January 4, 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 them here as necessary. The director initially denied the petition on November 3, 2005, finding that the petitioner failed to establish that she resided with her United States citizen spouse, that she was battered or subjected to extreme cruelty by her citizen spouse during their marriage, and that she entered into her marriage in good faith. On appeal, the AAO concurred with the findings 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 August 17, 2006, in accordance with the AAO's June 29, 2006 decision. The petitioner failed to respond to the NOID. Accordingly, the director denied the petition on January 4, 2007, on the grounds cited in the NOID. The director certified her 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, the AAO has received nothing further from the petitioner.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the June 29, 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 resided with her spouse, that she was battered or subjected to extreme cruelty by her spouse during their marriage, and that she entered into her marriage in good faith. Consequently, the petitioner is ineligible for immigrant classification 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 January 4, 2007 decision of the director is affirmed and the petition is denied.



ORDER: The petition is denied. The January 4, 2007 decision of the director is affirmed.