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U.S. Citizenship  
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BG

FILE:



Office: VERMONT SERVICE CENTER

Date: **SEP 19 2007**

EAC 03 136 51786

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 March 29, 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 July 21, 2005, based upon the finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse. On appeal, the AAO concurred with the findings of the director and found, in addition, that the petitioner failed to establish that he entered into his marriage in good faith. However, the AAO 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 July 31, 2006 in accordance with the AAO's March 9, 2006 remand decision. The petitioner, through counsel, timely responded to the director's NOID. On March 29, 2007, after addressing the statements made in counsel's brief and additional evidence received into the record, the director found that the petitioner had sufficiently established that he entered into his marriage in good faith. However, the director found that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse. The director's discussion will not be repeated here. The director certified his 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.

In response to the director's certification notice, the petitioner submitted an affidavit in which he indicates that he is "disappointed" that the Service "still is downplaying the [claimed] abuse." Additionally, the petitioner indicated that he has "moved on with [his] life," and has since remarried another United States citizen who filed an immediate relative petition on his behalf. However, no further evidence or statements have been made regarding the petitioner's claims of abuse to overcome the director's finding.<sup>1</sup>

<sup>1</sup> We note that while counsel also submitted a letter dated July 25, 2007, in which he indicates that he "previously stated that we were withdrawing our self-petition case," the record contains no statement or letter from either counsel or the petitioner indicating their intent to withdraw the petition.

Upon review, we concur with the director's determination. The relevant evidence was previously discussed in the March 9, 2006 decision of the AAO, which is incorporated here by reference. The director adequately addressed the evidence and the statements made in counsel's brief which were submitted in response to the director's NOID. No further arguments or testimonial or documentary evidence has been offered to overcome the director's findings.

Accordingly, the petitioner has not established that he was battered by or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act 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 March 29, 2007 decision of the director is affirmed and the petition is denied.

**ORDER:** The petition is denied. The March 29, 2007 decision of the director is affirmed.