

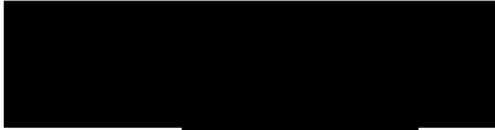
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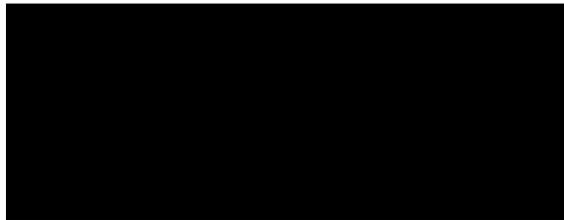
EAC 03 223 50419

Office: VERMONT SERVICE CENTER

Date: **SEP 21 2007**

IN RE:

Petitioner:



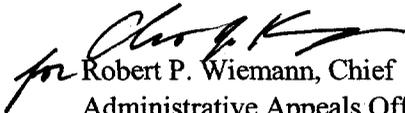
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 The July 13, 2007 decision of the director will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

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 25, 2005, finding that the petitioner failed to establish that she is a person of good moral character. On appeal, the AAO concurred with the findings of the director. In addition, the AAO noted the petitioner's failure to submit evidence to establish that her former spouse was a United States citizen, proof of the termination of both her and her former spouse's prior marriages and evidence to establish that the petitioner's divorce from her former spouse was connected to the battery or extreme cruelty perpetrated against the petitioner by her former spouse. 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 September 15, 2006, in accordance with the AAO's August 3, 2006 decision. The director sent the NOID to the petitioner in care of [REDACTED] an attorney who has not represented the petitioner since August 2005.¹ The petitioner failed to respond to the NOID and the director denied the petition on July 13, 2007. The director mailed the certification decision to [REDACTED] the attorney who represented the petitioner after [REDACTED]. However, the record contains a November 4, 2005 letter from [REDACTED] in which he notified the Service that he no longer represented the petitioner. The director certified his decision to the AAO for review and notified the petitioner 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 or any counsel.

¹ On August 23, 2005, [REDACTED] a Form G-28, Notice of Entry of Appearance as Attorney, in conjunction with the petitioner's appeal. That Form G-28, signed by the petitioner on August 10, 2005, substituted [REDACTED] for [REDACTED] as the petitioner's counsel. See 8 C.F.R. § 292.4(a).

Upon review, we concur with findings of the director that the record is insufficient to establish that the petitioner is a person of good moral character and had a qualifying relationship with a United States citizen because she failed to submit evidence of the termination of all of her prior marriages and proof of her spouse's United States citizenship. However, we withdraw the findings of the director that were based upon the inappropriate determination of the AAO regarding the petitioner's failure to submit evidence of the termination of her spouse's prior marriages and failure to establish a connection between her divorce and the claimed abuse.

Beyond the decision of the director, we find that the petitioner has also failed to establish that she is eligible for immediate relative classification based on a qualifying relationship with a United States citizen, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Despite these findings, the case must be remanded because the director's NOID and certification decision were sent to different addresses, neither of which is the petitioner's address of record. Citizenship and Immigration Services (CIS) must send notifications and decisions "addressed to a person at his last known address." 8 C.F.R. § 103.5a(a)(1). As previously indicated, the address contained on the NOID belongs to [REDACTED] an attorney who ceased representing the petitioner over a year before the NOID was issued and who is not an interested party in this proceeding. When no response was received after issuance of the NOID, the director issued the certification decision to [REDACTED], a second attorney who ceased representing the petitioner over 20 months before the date of the certification decision and who also is not an interested party in this proceeding. Given that the petitioner is currently unrepresented, and has been since [REDACTED] November 2005 letter indicating his withdrawal of representation of the petitioner,² the last address of record for the petitioner is contained on the Form G-28 signed by the petitioner in August 2005. The AAO issued its remand decision to that address, which is the petitioner's last known address of record and to which the NOID and certification decision of the director should have been issued.

Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a NOID as well as a new final decision to the correct address of record. The new decision, if adverse to the petitioner, shall be certified to this office for review.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

² Although [REDACTED]'s letter indicated that the petitioner had obtained a third attorney, the record does not contain a Form G-28 or other information indicating that the petitioner had obtained additional representation.