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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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FILE:

EAC 05 180 52197

Office: VERMONT SERVICE CENTER

Date:

DEC 16 2008

IN RE:

Petitioner:

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

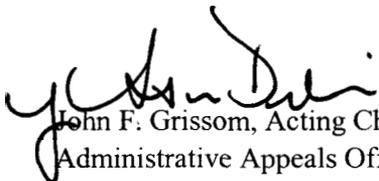
ON BEHALF OF PETITIONER:

SELF-REPRESENTED<sup>1</sup>

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

<sup>1</sup> The AAO considers the petitioner to be self-represented because on February 1, 2008, the AAO requested that the law firm [redacted] and [redacted] submit a Form G-28, Notice of Appearance as Attorney or Representative, that was signed by [redacted] and the petitioner. The Form G-28 that had been previously submitted was signed by [redacted], a paralegal. The Form G-28 that the law firm submitted on February 6, 2008 was still signed by [redacted], not an attorney or accredited representative.

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

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 states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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].

In this matter, the director initially denied the petition on January 24, 2006, finding that the petitioner failed to establish that she had resided with the United States citizen or lawful permanent resident and that she had entered into the qualifying relationship in good faith. In its October 3, 2006 decision on appeal, the AAO concurred with the director's determinations but remanded the petition for issuance of a Notice of Intent to Deny (NOID) the petition in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on December 1, 2006, which informed the petitioner that she had failed to establish that she had resided with the citizen husband and that she had failed to establish that she had entered into the qualifying relationship marriage in good faith. Upon receiving no response to the NOID, the director denied the petition on April 4, 2007, based on the grounds listed in the NOID. The director certified his decision to the AAO on the same date as directed by the AAO as the decision entered was adverse to the petitioner. The petitioner failed to present any further evidence on certification.

In the AAO's prior decision of October 3, 2006, incorporated here by reference, we fully discussed the pertinent facts and relevant evidence in the record. As the record does not contain further evidence, the AAO concurs with the director's decision that the petitioner has not established that she resided with

the United States citizen and that she failed to establish that she entered into the qualifying relationship in good faith.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. The petitioner has not sustained that burden.

**ORDER:** The director's April 4, 2007 decision is affirmed. The petition is denied.