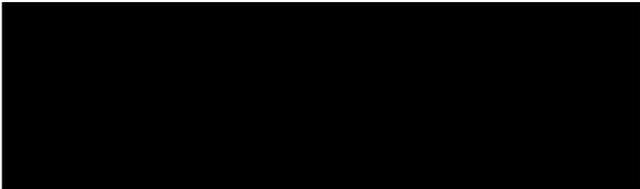


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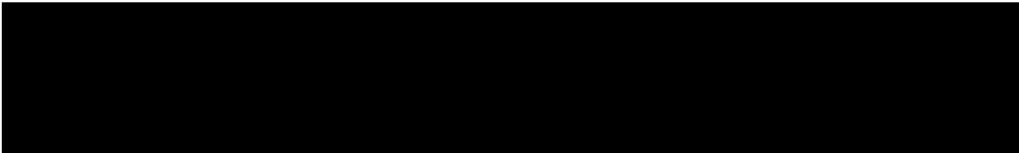
IN RE:

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:



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
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 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 and the petition will be denied.

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 case, the director initially denied the petition on February 3, 2006, for failure to establish the requisite battery or extreme cruelty, entry into the marriage in good faith and good moral character. In its November 3, 2006 decision on appeal, the AAO concurred with the director's determinations and further found that the petitioner had not established the requisite qualifying relationship and eligibility for immediate relative classification based on such a relationship. The AAO remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on December 6, 2006, which informed the petitioner, through counsel, that she had failed to establish the requisite qualifying relationship and corresponding eligibility for immediate relative classification, battery or extreme cruelty, her good-faith entry into marriage with her former husband, and her good moral character. Neither the petitioner nor counsel responded to the NOID. Accordingly, the director denied the petition on March 29, 2007 on the grounds cited in the NOID and certified his decision to the AAO for review.

The evidence submitted below was fully addressed in our prior decision, incorporated here by reference. On certification, counsel submits a letter and copies of medical records of the petitioner's two children. The record shows that the petitioner's former husband is not the father of her children. The petitioner's son was born three years after her divorce and the medical records of the petitioner's

daughter also postdate the petitioner's separation and divorce from her former husband. The medical records contain no mention of the petitioner's former husband and no indication of any abuse. The evidence submitted on certification is thus irrelevant to any of the grounds for denial of the petition.

In his April 11, 2007 letter, counsel merely asserts that the petitioner has already "provided substantial credible evidence and facts in support of her petition." Counsel does not address any alleged error of fact or law in the director's decision.

Upon review, we concur with the director's determinations. The petitioner has not demonstrated that she had a qualifying relationship with her former husband, her corresponding eligibility for immediate relative classification, her or her daughter's subjection to battery or extreme cruelty by her former husband during their marriage, her entry into the marriage in good faith and her good moral character. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The denial of the petition will be affirmed for the reasons stated above, with each considered 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. The petitioner has not sustained that burden.

ORDER: The director's decision of March 29, 2007 is affirmed. The petition is denied.