

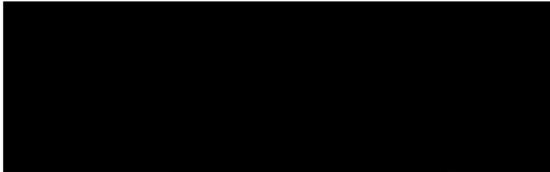
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 05 202 53554

Office: VERMONT SERVICE CENTER

Date: FEB 01 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:



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.

fr *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 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 January 9, 2006 for failure to establish the requisite good-faith entry into the marriage. In its September 27, 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) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on January 24, 2007, which informed the petitioner, through counsel, that she had failed to establish her entry into marriage with her husband in good faith. Neither the petitioner nor counsel responded to the NOID. Accordingly, the director denied the petition on July 5, 2007 on the ground cited in the NOID and certified his decision to the AAO for review.

The relevant evidence submitted below was discussed in our prior decision, incorporated here by reference. On certification, counsel submits a letter and additional statements from the petitioner and her aunt. In her statement notarized on September 7, 2007, the petitioner's aunt states that when she called the petitioner and spoke to her and her parents-in-law, "[e]verything seemed fine and sound [sic] like she and her husband seemed very much in love and happy." The petitioner's aunt further states that after she became aware of their marital problems, the petitioner initially said she did not want to leave her husband because she loved him and wanted to resolve their difficulties. However, the petitioner's aunt does not indicate that she attended the petitioner's engagement ceremony or wedding

or that she ever visited the petitioner and her husband during their marriage. Her general statements regarding her impression of the petitioner's feelings for her husband lack probative detail and are insufficient to establish the petitioner's claim.

In her undated letter submitted on certification, the petitioner states that her husband visited her twice in Vietnam and that the former couple was engaged on his second visit. The petitioner describes her feelings for her husband during their courtship in general terms. For example, when describing how she felt after the engagement ceremony, the petitioner states: "I am very happy, have a beautiful feeling, and I want to spend the rest of my life with him because he is my first love." The petitioner states that she and her husband corresponded between his visits and while she was waiting for her visa, but she submits no evidence of their correspondence. While the petitioner previously explained that she fled from her husband's home without her belongings, she does not describe their correspondence or any other documentation of their relationship that she left behind. The petitioner's statements on certification lack detailed, probative information sufficient to establish her claim.

On certification, counsel asserts that under the abusive circumstances of the petitioner's short marriage, "none of the traditional evidence exists, such as checking accounts, credit cards, insurance, lease etc. We are forced to prove [the petitioner's] intentions from statements such as those attached." We note that the director requested further documentation of the petitioner's good-faith entry into her marriage in both the September 26, 2005 RFE and the January 24, 2007 NOID. In addition, both the director's initial decision of January 9, 2006 and our prior decision discussed the insufficiency of the evidence submitted below. In our prior decision, we specifically acknowledged that the short duration of the petitioner's marriage may have explained her lack of joint documentation with her husband, but explained that the petitioner had submitted insufficient testimony to establish her good-faith entry into the marriage. Despite these four prior notifications of the deficiencies in her case, the petitioner failed to submit additional evidence to support her claim below and submits her statement and that of her aunt for the first time on certification. Neither counsel nor the petitioner explains why the statements were not submitted below.

The testimony submitted on certification fails to provide detailed, probative information sufficient to establish that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Accordingly, the July 5, 2007 decision of the director denying the petition is affirmed. The petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her 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. The petitioner has not sustained that burden.

ORDER: The director's decision of July 5, 2007 is affirmed. The petition is denied.