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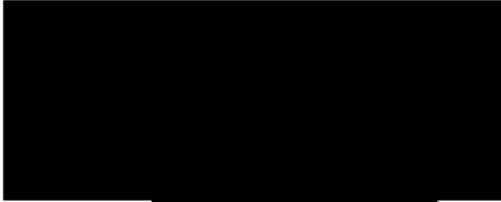
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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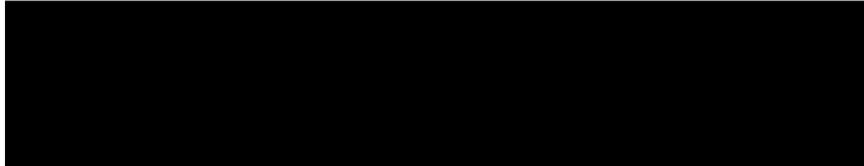
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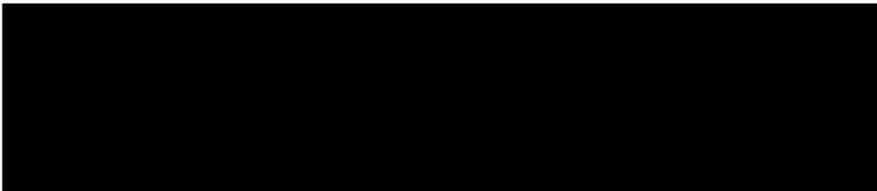
IN RE:

Petitioner:



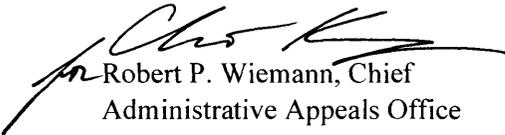
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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, 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 16, 2007 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (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 December 22, 2005, finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her citizen spouse during their marriage. On appeal, the AAO concurred with the determination of the director but remanded the case on August 16, 2006 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 28, 2006, which afforded the petitioner the opportunity to establish her claim of battery or extreme cruelty. The petitioner, through counsel, timely responded to the director's NOID by submitting a brief and copies of the petitioner's previously submitted declarations. On March 16, 2007, after considering the arguments contained in counsel's brief, the director found that the petitioner failed to establish her claim of abuse. The director's discussion will not be repeated here. 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. No further submission has been received. As such, the record is considered to be complete as it now stands.

The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has not submitted any further evidence since the issuance of that decision and the director's decision adequately addressed the arguments made by counsel in response to the NOID. Accordingly, we concur with the finding of the director that the petitioner has not established that she was battered or subjected to extreme cruelty by her spouse during their marriage. Consequently, 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. Here, that burden has not been met.

Accordingly, the March 16, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The March 16, 2007 decision of the director is affirmed.