

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

B9

[REDACTED]

FILE: [REDACTED]
EAC 04 147 53771

Office: VERMONT SERVICE CENTER

Date: FEB 14 2008

IN RE: Petitioner:

[REDACTED]

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:

[REDACTED]

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.

Maura Deadrick
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 The decision of the director will be withdrawn. Because the petition is not approvable, it will again be remanded for further action.

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 August 25, 2005 for failure to establish the requisite good moral character. In its June 20, 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 October 6, 2006, which stated that the petitioner had failed to establish that she was a person of good moral character. The director issued the NOID to petitioner's prior counsel. Neither the petitioner nor current counsel responded to the NOID. The director denied the petition on March 16, 2007 on the ground cited in the NOID. In his Notice of Certification, addressed to present counsel, the director informed the petitioner that she could submit a brief to the AAO within 30 days after service of the certified decision. To date, the AAO has received nothing further from the petitioner or counsel.

The petition must be remanded because the NOID was not properly issued. When an alien is represented in proceedings before Citizenship and Immigration Services (CIS), CIS must issue all notices to the alien's attorney of record. 8 C.F.R. § 292.5(a). During proceedings before CIS, substitution of counsel is permitted upon notification of the new attorney. 8 C.F.R. § 292.4(a). In this case, prior counsel filed the petition, but present counsel filed an appearance on behalf of the petitioner

on appeal. Accordingly, the AAO issued its decision on appeal to the petitioner in care of present counsel. However, upon remand, the director issued the NOID to prior counsel despite the fact that present counsel had already properly filed an appearance to represent the petitioner. Although the director's March 16, 2007 decision was issued to present counsel, the NOID was improperly issued to prior counsel. Consequently, the petition must again be remanded for issuance of a new NOID to present counsel.

The petitioner has submitted no brief or further evidence since our decision on appeal was issued. Based on the present record, the petitioner has not demonstrated that she is a person of good moral character and she is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Nonetheless, the petition must be remanded a second time for proper issuance of the NOID.

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.

ORDER: The director's decision of March 16, 2007 is withdrawn. Because the petition is not approvable, the petition is remanded to the director for further action and issuance of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.