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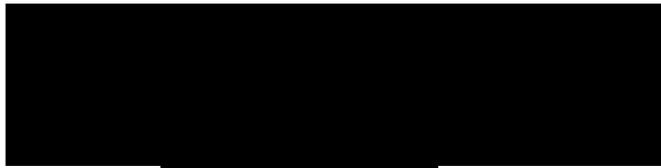
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

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PUBLIC COPY



FILE: [Redacted] EAC 04 046 50204

Office: VERMONT SERVICE CENTER

Date: FEB 14 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.

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 June 15, 2005 for failure to establish the requisite qualifying relationship to a U.S. citizen, corresponding eligibility for immigrant classification, battery or extreme cruelty and good moral character. In its June 23, 2006 decision on appeal, the AAO found that the petitioner established his good moral character, but did not demonstrate that he entered into his marriage in good faith. Although the AAO otherwise concurred with the director's determinations, it nonetheless 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 September 28, 2006, which informed the petitioner, through counsel, that he had failed to establish the requisite qualifying relationship to a U.S. citizen, corresponding eligibility for immigrant classification, battery or extreme cruelty and his good-faith entry into his marriage. Although the AAO determined that the petitioner had submitted evidence on appeal that established his good moral character, the director also included good moral character as an intended ground for denial in the NOID. Neither the petitioner nor counsel responded to the NOID. Accordingly, the director denied the petition on April 24, 2007 on the grounds cited in the NOID. In his Notice of Certification, the director informed the petitioner, through counsel, that he 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 relevant evidence submitted below was discussed in our prior decision, incorporated here by reference. Citizenship and Immigration Services (CIS) has received no further evidence or brief from counsel or the petitioner since that decision was issued. Accordingly, the April 24, 2007 decision of the director denying the petition is affirmed in so far as the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen, was eligible for immigrant classification based on such a relationship, was subjected to battery or extreme cruelty by his former wife during their marriage and that he entered their marriage in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The director did not discuss the basis for his finding that the petitioner had failed to demonstrate his good moral character. Because the petitioner submitted an updated police clearance letter on appeal, we found in our prior decision that he had established his good moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). Upon review, we find no evidence to the contrary. Accordingly, the portion of the director's April 24, 2007 decision to the contrary is withdrawn.

The denial of the petition will be affirmed for the four reasons discussed 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 April 24, 2007 is affirmed. The petition is denied.