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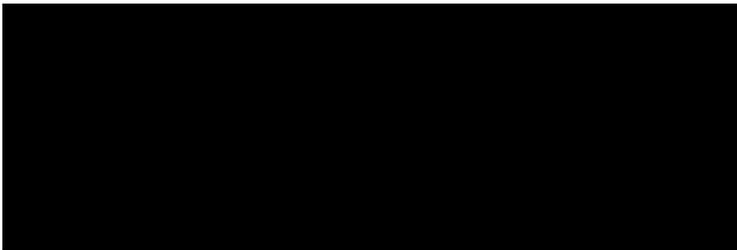
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
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Office: VERMONT SERVICE CENTER

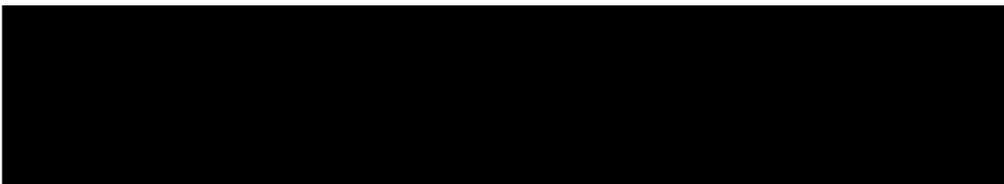
Date FEB 15 2008

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.

Laura Deardrick
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). An alien who was married to a U.S. citizen within the last two years remains eligible if he or she demonstrates that the legal termination of the marriage was connected to the U.S. citizen's battery or extreme cruelty. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 November 15, 2005, for failure to establish the requisite battery or extreme cruelty and good-faith entry into the marriage. In our May 17, 2006 decision on appeal, we 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 November 27, 2006, which informed the petitioner, through counsel, that she had failed to establish that her former husband subjected her to battery or extreme cruelty during their marriage and that she entered into the marriage in good faith.¹ The petitioner submitted further evidence in response to the NOID. The director determined the new evidence did not establish the petitioner's eligibility and denied the petition on October 26, 2007 on the

¹ The NOID also requested current evidence of the petitioner's good moral character. In his October 26, 2007 decision, the director concluded that the evidence submitted in response to the NOID established the petitioner's good moral character.

above-mentioned grounds cited in the NOID. The director certified his decision to the AAO for review. On certification, counsel submits a brief and copies of documents previously submitted.

The relevant evidence submitted below was fully addressed in our prior decision, incorporated here by reference. Accordingly, we will only address the relevant evidence submitted after that decision was issued. In response to the NOID, the petitioner submitted affidavits from her sister-in-law, [REDACTED], the supplemental statement of her friend, [REDACTED] and the affidavit of her brother, [REDACTED]. We agree with the director that these attestations fail to overcome the grounds for denial.

Battery or Extreme Cruelty

[REDACTED] is the only affiant to discuss the alleged abuse. [REDACTED] indicates that she lives in the Philippines and states that the petitioner did not confide in her about her marital problems until August 2005, over three years after the petitioner and her former husband separated. [REDACTED] describes actions of the petitioner's former husband, as related to her by the petitioner. Although consistent with the petitioner's testimony, [REDACTED]'s affidavit is of little probative value because she does not indicate that she ever visited the petitioner during her marriage; she states that they did not speak over the telephone during the petitioner's marriage; and her statements are based on a conversation with the petitioner which occurred over a year after this petition was filed.

On certification, counsel asserts that the director did not address "any of the evidence submitted by" the petitioner. Counsel is mistaken. In his October 26, 2007 decision, the director specifically referenced both his prior decision and our earlier decision, both of which were incorporated by reference and fully addressed the relevant evidence submitted below. Accordingly, in the interest of administrative economy, the director only addressed the relevant evidence submitted in response to the NOID in his October 26, 2007 decision.

Counsel further claims that "the [petitioner's] own affidavits provide extensive insight into the battery and extreme cruelty that the [petitioner] suffered with her abusive spouse from the verbal abuse to the sexual abuse." In our prior decision, we explained that the significant differences in the grammar, vocabulary, syntax and style of the petitioner's first and subsequent affidavits indicated that the language of the latter attestations were not her own and seriously detracted from the credibility and probative value of her testimony. On certification, counsel offers no explanation for the differences.

[REDACTED]'s affidavit and counsel's claims on certification do not overcome this ground for denial. The petitioner has failed to establish that her former husband subjected her to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Entry into the Marriage in Good Faith

██████████ states that she met the petitioner's former husband when he visited the petitioner in the Philippines and that the petitioner treated her former husband well, took him everywhere and they both had fun and enjoyed each other's company. ██████████ provides no further details and her statements are of little probative value.

In her supplemental statement, the petitioner's friend, ██████████ states that she accompanied the petitioner on her outings with her former husband during his visit to the Philippines. ██████████ says that she had never seen the petitioner "happy like that before." She also describes how the petitioner spent her own money to take her former husband out during his visit, was touched by how her former husband gave tips, made her former husband laugh, cried after his departure and was happy when her former husband called or sent her letters. The petitioner's brother, ██████████ similarly describes the petitioner's kind treatment of her former husband during his visit to the Philippines. ██████████ states that the petitioner used her savings to pay for all the expenses and describes her as constantly praising her former husband and being very happy during his visit. Both ██████████ and ██████████ describe the petitioner's attestation of her love for her former husband when she decided to accept his marriage proposal.

The attestations of ██████████ and ██████████ do not, however, overcome the significant differences in the petitioner's own accounts of her courtship, marriage and inability to document her marital relationship. As noted in our prior decisions, the contrast between the grammar, vocabulary, syntax and style of the petitioner's first and latter affidavits indicates that the language of the subsequent attestations is not her own and greatly detracts from the credibility and probative value of her testimony. Again, counsel provides no explanation for these differences in her brief submitted on certification. Counsel merely asserts that the director "erroneously diminished the weight that should have been afforded" the affidavits of ██████████ and ██████████

Counsel's assertions fail to overcome this ground for denial. The petitioner has not demonstrated that she entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Upon review, we concur with the director's determinations. The petitioner has not established by a preponderance of the evidence that her former husband subjected her to battery or extreme cruelty during their marriage and that she entered into the marriage in good faith. 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 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 October 26, 2007 is affirmed. The petition is denied.