

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9



FILE:

EAC 04 119 54055

Office: VERMONT SERVICE CENTER

Date: FEB 26 2008

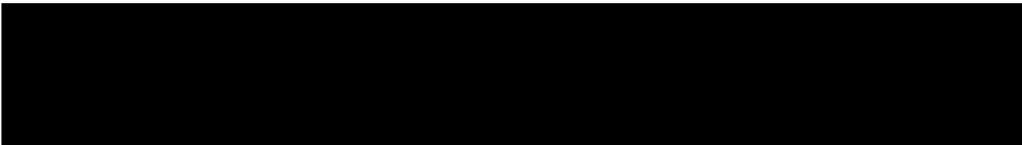
IN RE:

Petitioner:



PETITION: Petition for Immigrant Battered 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.

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 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 6, 2006 for failure to establish the requisite battery or extreme cruelty. In its April 14, 2006 decision on appeal, the AAO concurred with the director's determination 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 24, 2006, which informed the petitioner, through counsel, that he had failed to establish the requisite battery or extreme cruelty. In response, the petitioner submitted additional affidavits from himself and his friend, [REDACTED]. The petitioner also submitted: a copy of an unsigned and undated handwritten note with the names of police officers and their telephone numbers and the notation, "Civil Matter;" a copy of a handwritten note dated August 8, 2004 with his wife's first name, address and telephone number; and a letter dated November 20, 2006 from the petitioner's employer indicating that the petitioner's schedule and hours as a bus driver changed in May 2004. The director found the evidence insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition on March 29, 2007 on the ground cited in the NOID and certified his decision to the AAO for review. 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.

On January 9, 2008, counsel submitted a letter to the AAO requesting “that the pending appeal be withdrawn.” We cannot honor counsel’s request because the case is no longer before us on appeal, but upon certification. The regulation at 8 C.F.R. § 103.3(a)(2)(ix) permits the affected party to withdraw an appeal “before a decision is made.” In this case, the AAO issued its decision on the appeal on April 14, 2006. The case is currently before us upon certification of the director’s subsequent, adverse decision. The regulation governing certifications allows the affected party to submit a brief, but makes no provision for withdrawal. *See* 8 C.F.R. § 103.4(a).

Upon review, we concur with the director’s determination. The relevant evidence submitted below was discussed in our prior decision, incorporated here by reference. As discussed by the director, the two additional affidavits submitted in response to the NOID do not provide detailed and probative information sufficient to establish the requisite battery or extreme cruelty. Accordingly, the March 29, 2007 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.

We note that the petitioner remains in removal proceedings before the Denver Immigration Court and his next hearing is scheduled for July 9, 2008.

ORDER: The director’s decision of March 29, 2007 is affirmed. The petition is denied.