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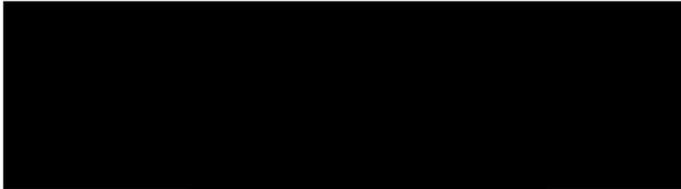
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



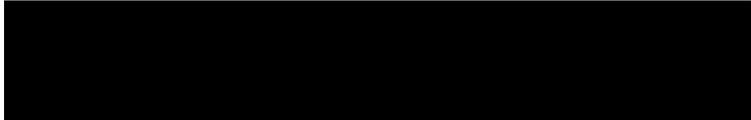
Office: VERMONT SERVICE CENTER

Date FEB 26 2008

EAC 04 220 52228

IN RE:

Petitioner:



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

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 The decision of the director will be withdrawn and the petition will again be remanded for further action.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(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 16, 2005, for failure to establish the requisite battery or extreme cruelty. In its December 12, 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 February 26, 2007 which informed the petitioner that he had not submitted sufficient evidence that his former wife had battered or subjected him to extreme cruelty during their marriage. The petitioner did not respond to the NOID. Accordingly, on July 5, 2007, the director denied the petition on the ground cited in the NOID and certified his decision to the AAO for review.

The case must be remanded again because the Notice of Certification was issued to the wrong address: [REDACTED] rather than [REDACTED] counsel's address of record. 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). Hence, the Notice of Certification was not mailed to the petitioner at her last known

address pursuant to the regulation at 8 C.F.R. § 103.5a(a)(1) and we cannot ensure that the petitioner was notified of the director's decision, as required by 8 C.F.R. § 103.4(a)(2). Accordingly, the case must be remanded to the director for issuance of a newly dated Notice of Certification properly addressed to counsel.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The July 5, 2007 notice of certification of the director is withdrawn. Because the petition is not approvable, the matter is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.