



U.S. Citizenship
and Immigration
Services

B9

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

[REDACTED]

FILE: [REDACTED]
EAC 04 163 53637

Office: VERMONT SERVICE CENTER

Date: FEB 27 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 O'Leary
for 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 October 17, 2005 for failure to establish the requisite battery or extreme cruelty and good moral character. In its June 2, 2006 decision on appeal, the AAO concurred with the director's determination that the petitioner had not established battery or extreme cruelty, but found that evidence submitted on appeal established the petitioner's good moral character.¹ The AAO 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 October 30, 2006, which informed the petitioner, through counsel, that she had failed to establish the requisite battery or extreme cruelty. In response, the petitioner submitted additional evidence. The director determined that the new evidence failed to establish that the petitioner's husband had battered or subjected her to extreme cruelty during their marriage. The director denied the petition on July 24, 2007 and certified his decision to the AAO for review. In his Notice of

¹ The AAO also determined that because the petitioner and another affiant indicated that the petitioner's marriage had been terminated, the AAO could not affirm the director's conclusion that the petitioner had established the requisite, qualifying relationship. Upon review, we withdraw that finding because the record contains no documentation showing that the marriage was terminated more than two years before the petition was filed.

Certification, the director informed the petitioner, through counsel, 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 counsel or the petitioner.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in our prior decision, incorporated here by reference. Accordingly, we will only address the evidence submitted after that decision was issued. In response to the NOID, the petitioner submitted documents pertaining to the mental illness and medical treatment of her spouse, and her own additional statement. In her statement, the petitioner reiterates that her husband had extreme mood swings and abused alcohol and controlled substances. The petitioner states that her husband would yell at her and insult her when he was intoxicated or depressed and she recounts incidents described in her previous testimony submitted below and discussed in our prior decision. The petitioner further reiterates that she lost weight and was emotionally affected by her husband's behavior. The documents submitted in response to the NOID confirm that the petitioner's husband received mental health treatment in 2003 and was prescribed an anti-anxiety medication in 2003 and early 2004. These documents do not, however, indicate that the mental illness of the petitioner's husband resulted in his infliction of battery or extreme cruelty upon the petitioner during their marriage.

In sum, the relevant evidence attests to the mental illness, alcohol and drug abuse of the petitioner's husband and the resultant breakdown of their marriage. The record does not, however, establish that the behavior of the petitioner's husband rose to the level of battery or extreme cruelty. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Accordingly, the July 24, 2007 decision of the director denying the petition is affirmed.

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 July 24, 2007 is affirmed. The petition is denied.