



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B9

[REDACTED]

FILE:

[REDACTED]

EAC 05 238 52334

Office: VERMONT SERVICE CENTER

Date:

JAN 11 2008

IN RE:

Petitioner:

[REDACTED]

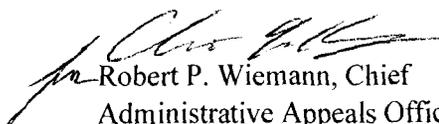
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The January 17, 2007 decision of the director will be affirmed and the petition will be denied.

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).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , 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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat them here as necessary. The director initially denied the petition on December 19, 2005, finding that the petitioner failed to establish that she had a qualifying relationship as the spouse of a United States citizen at the time her petition was filed, that she was eligible for immigrant classification based upon a qualifying relationship, and that she was a person of good moral character. On appeal, the AAO considered additional evidence submitted by the petitioner and found that she had satisfactorily established that she had a qualifying relationship as the spouse of a United States citizen and that she was eligible for immigrant classification based upon that relationship. However, the AAO concurred with the director's determination that the petitioner failed to establish that she was a person of good moral character. Despite this finding, the AAO remanded the case because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on September 8, 2006, and afforded the petitioner an opportunity to submit evidence that she was a person of good moral character. The petitioner failed to respond to the director's NOID. Accordingly, the director denied the petition on January 17, 2007, based on the ground cited in the NOID. The director certified his decision to the AAO for review and notified the petitioner that she could submit a brief to the AAO within 30 days of service of the director's decision. To date, the AAO has received nothing further from the petitioner.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has not submitted a brief or further evidence since the issuance of that decision. Accordingly, the petitioner has not established that she was a person of good moral character. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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. Here, that burden has not been met. Accordingly, the January 17, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The January 17, 2007 decision of the director is affirmed.