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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 05 180 52369

Office: VERMONT SERVICE CENTER

Date: JAN 23 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:



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 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 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].

In this case, the director initially denied the petition on January 3, 2006 for failure to establish the requisite good-faith entry into the marriage, joint residence and battery or extreme cruelty. In its September 1, 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 October 16, 2006 which informed the petitioner that she had not submitted sufficient evidence that she entered into marriage with her husband in good faith, resided with him and that her husband battered or subjected her to extreme cruelty during their marriage. **The petitioner timely responded to the NOID. The director addressed the evidence submitted in response to the NOID, but found it insufficient to establish the petitioner's eligibility.** On January 4, 2007, the director denied the petition on the grounds cited in the NOID and certified the decision to the AAO for review.

The director's Notice of Certification informed the petitioner that she had 30 days to submit a brief to the AAO. To date, over a year after the director issued the Notice of Certification, the AAO has received nothing further from counsel or the petitioner.

As the evidence submitted below was thoroughly addressed in the prior decision of the AAO, incorporated here by reference, we will only discuss the evidence submitted for the first time in response to the NOID: the petitioner's 12-paragraph, undated statement. In that statement, the

petitioner asserts that she and her husband dated for a year before he proposed and that she married her husband because she loved him. The petitioner does not provide any further, probative information regarding the former couple's courtship, wedding and shared experiences, apart from the alleged abuse. The petitioner explains that many of her things "were destroyed in the hurricane season" and that when she asked other friends who knew her husband to help her, they did not "want to get involved in something like this." As noted by the director, however, the petitioner does not explain why she was able to submit bank statements of the former couple's joint account postdating their separation, but was unable to obtain documentation of the opening date and prior use of the account by the former couple.

In regards to the discrepancy between her husband's signature on the former couple's lease and on other documents in the record, the petitioner states that she does not understand why her husband was "changing his handwriting all the time." She does not further describe the former couple's joint residence or provide any other, relevant and probative information.

Concerning the alleged abuse, the petitioner states that she "felt used by [her husband] most of the time," that every time they fought, he made her feel like "nobody" and that she "didn't deserve to be alive," and that she "felt the most used and abused" when she was in bed with her husband. The petitioner states that her husband "was very careful not to fight or do anything inappropriate in front of" her siblings because he did not want anyone to witness the abuse. The petitioner does not, however, describe any particular incident of abuse in probative detail.

While the petitioner explains that many of her documents were destroyed and that some of her friends declined to help her, her own statements lack detailed, probative information sufficient to overcome the grounds for denial. Accordingly, we concur with the director's determinations.

The January 4, 2007 decision of the director is affirmed. The petitioner has failed to demonstrate that she married her husband in good faith, resided with him and that he subjected her to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The denial of the petition will be affirmed for the above stated reasons, with each considered as 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 January 4, 2007 is affirmed. The petition is denied.