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FILE:

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Office: VERMONT SERVICE CENTER

Date: **JAN 30 2008**

WAC 98 083 54638

IN RE:

Petitioner:

[Redacted]

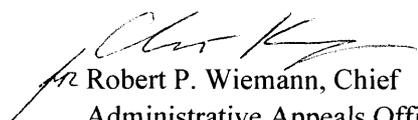
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

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 July 2, 2007 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 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].

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 January 4, 2006, finding that the petitioner failed to establish that her spouse had been a lawful permanent resident of the United States within two years of the filing of her petition, that she was eligible for preference immigrant classification based on that relationship and that she was a person of good moral character. On appeal, the AAO concurred with the director's determination and found an additional reason for ineligibility. Specifically, the AAO noted that the record did not contain documentary evidence of the petitioner's marriage. However, the AAO remanded the case on August 3, 2006 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 January 31, 2007 in accordance with the AAO's remand decision. The petitioner failed to respond to the director's NOID. Accordingly, the director denied the petition on July 2, 2007, based on the grounds 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 submitted no further brief or evidence since the issuance of that decision. Accordingly, the petitioner has not established that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States at the time of filing her petition, that she is eligible for preference immigrant classification based upon that relationship, and that she is a person of good moral character. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

The petition will be denied 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. Here, that burden has not been met. Accordingly, the July 2, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The July 2, 2007 decision of the director is affirmed.