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FILE: [Redacted]
EAC 05 083 53115

Office: VERMONT SERVICE CENTER

Date: **JAN 30 2008**

IN RE: Petitioner: [Redacted]

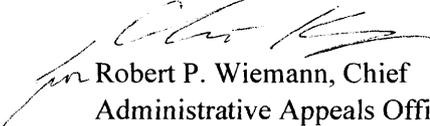
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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, 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 March 16, 2007 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (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 certain facts as necessary here. The director initially denied the petition on December 19, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his citizen spouse during their marriage and that he was a person of good moral character. On appeal, the AAO found that although the petitioner was able to establish his good moral character, he failed to establish that he was battered or subjected to extreme cruelty by his citizen spouse during their marriage. However, the AAO remanded the case on September 22, 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 December 6, 2006, which afforded the petitioner the opportunity to establish his claim of battery or extreme cruelty. The petitioner timely responded to the director's NOID with additional evidence. On March 16, 2007, after addressing the additional evidence received into the record, the director found that the petitioner failed to establish his claim of abuse. The director's discussion will not be repeated here. The director certified his decision to the AAO for review and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. As no further submission has been received, the record is considered to be complete as it now stands.

Our review focuses on the evidence submitted subsequent to the AAO's remand decision. The evidence consists of affidavits submitted on the petitioner's behalf by two friends, [REDACTED] and [REDACTED]. We do not find the affidavits are sufficient to establish the petitioner's claim of abuse. First, while [REDACTED] claims that the petitioner "described me of his problems . . . , [REDACTED] does not indicate what those "problems" were. Although my [REDACTED] describes one incident where the petitioner's spouse would not let the petitioner into their apartment, we do not find this single incident establishes that the petitioner was battered or subjected to extreme cruelty, or that his spouse's actions were part of a pattern of abuse against the

petitioner. Similarly, [REDACTED] generally claims that the petitioner was “sad and depressed,” spoke of getting into arguments with his spouse “over small things,” and that she “was always threatening” to put the petitioner out and “being cruel” [REDACTED] describes one incident in which the petitioner’s spouse pulled a knife on the petitioner. This incident was previously discussed in our remand decision. In that decision, we noted that the petitioner’s claim regarding this incident lacked credibility given that it was not discussed in the petitioner’s initial statement or in his psychological assessment. Despite our finding that the petitioner’s claim lacked credibility, the petitioner failed to submit any statement or explanation for his failure to make this claim at any time prior to his appeal. The statement from [REDACTED] although generally referencing this incident, is not sufficient to establish the petitioner’s credibility and his claim regarding this alleged incident.

Accordingly, we concur with the findings of the director that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his 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 March 16, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The March 16, 2007 decision of the director is affirmed.