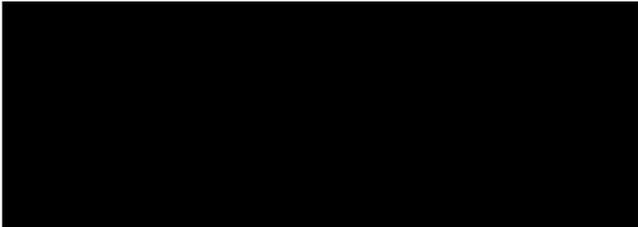


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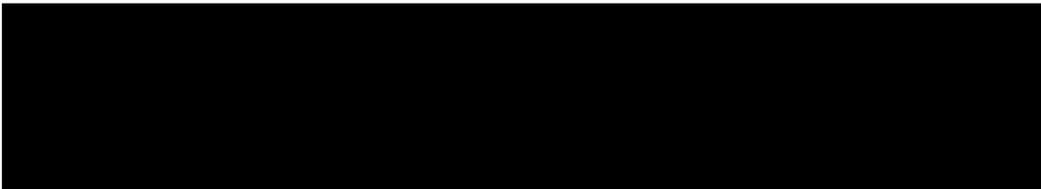
Office: VERMONT SERVICE CENTER

Date: **JAN 30 2006**

IN RE: Petitioner: [Redacted]

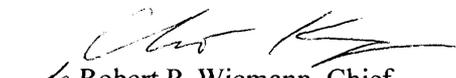
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 January 10, 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 August 23, 2005, finding that the petitioner failed to establish that he entered into his marriage in good faith. On appeal, the AAO concurred with the findings of the director but remanded the case on May 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). The AAO also requested the director to reconsider on remand whether or not the petitioner had established that he was battered or subjected to extreme cruelty by his spouse during their marriage.

Upon remand, the director issued a NOID on June 26, 2006, and afforded the petitioner the opportunity to submit further evidence to establish his good faith marriage and his claim of abuse. The petitioner, through counsel, timely responded to the director's NOID with a brief from counsel. No further evidence was submitted. On January 10, 2007, after considering counsel's brief and reviewing the evidence contained in the record, the director found that the petitioner established that he was battered or subjected to extreme cruelty by his spouse. However, the director found that the petitioner failed to establish his good faith marriage. The director certified her 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. The record contains no further submission. Accordingly, the record is considered to be complete as it now stands.

Given our previous discussion of the evidence contained in the record, our review here focuses on documents that were submitted after the AAO's remand decision was issued and related to the petitioner's claim of a good faith marriage. While no further evidence has been submitted since our remand decision, the record does contain a brief from counsel. In his brief, counsel stated that it was "contradictory and irrational" for the director to find that the petitioner had established "all of the [other] eligibility requirements" and yet determine that the

petitioner failed to establish his good faith marriage. Counsel argued that the petitioner's submission of documentation that demonstrated he resided with his spouse is evidence of his good faith marriage. We are not persuaded by counsel's argument. Although a petitioner may submit evidence that he did, in fact, reside with his spouse, that fact does not de facto establish that the petitioner was engaged in a bona fide marital relationship. As previously cited, the provisions contained in section 204(a)(1)(A)(iii) require a petitioner to separately establish, among other requirements, that the petitioner resided with his spouse *and* that he entered into the marriage in good faith. The clause regarding a good faith marriage would be rendered meaningless if, once a petitioner has established residence with his spouse, he need not also establish that he entered into the marriage in good faith. Counsel also argued that the petitioner's evidence was sufficient to establish the petitioner's claim of a good faith marriage. However, the petitioner's evidence was previously considered by both the director and the AAO and found to be insufficient to establish the petitioner's claim of a good faith marriage. As the petitioner failed to submit new evidence or probative details regarding his good faith marriage to overcome the noted insufficiencies, he has not overcome these findings.

Based upon the above discussion, we concur with the finding of the director that the petitioner failed to establish that he entered into his marriage in good faith. 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 January 10, 2007 decision of the director is affirmed and the petition is denied.

**ORDER:** The petition is denied. January 10, 2007 decision of the director is affirmed.