

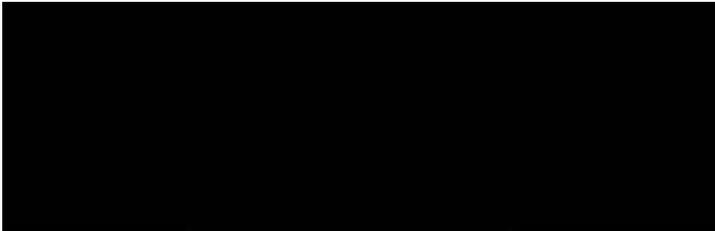
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



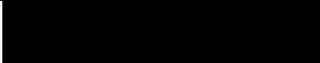
U.S. Citizenship  
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Services

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FILE:



Office: VERMONT SERVICE CENTER

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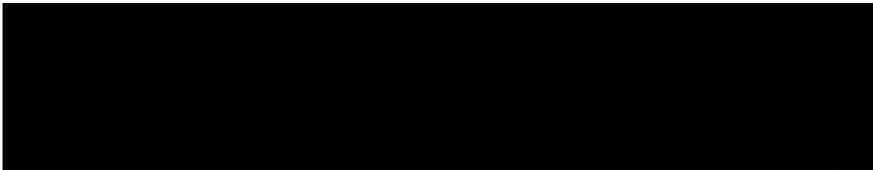
IN RE:

Petitioner:



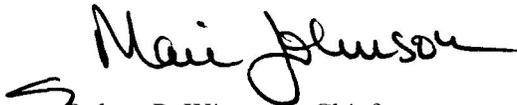
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:



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 matter for further action. The director again denied the petition and certified the decision to the AAO for review. The AAO affirmed the director's decision but subsequently reopened the proceeding on its own motion. The petition will remain denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

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)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a U.S. lawful permanent resident is eligible to self-petition under these provisions if he or she is an alien:

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence[.]

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) 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 certain facts as necessary here. In this case, the director initially determined that the petitioner had submitted insufficient evidence to demonstrate that her former husband lost his lawful permanent resident status due to an incident of domestic violence and, therefore, failed to establish the requisite qualifying relationship to a lawful permanent resident and corresponding eligibility for preference immigrant classification.

The AAO remanded the case to the director but ultimately upheld the director's certified decision denying the petition for failure to establish the requisite qualifying relationship and eligibility for preference immigrant classification based on such a relationship.

On June 18, 2008, the AAO reopened these proceedings on its own motion and provided the petitioner a period of 30 days in which to supplement the record. The petitioner, through counsel, responded to the AAO's motion on June 30, 2008 by submitting a letter and copies of documents already contained in the record. In his letter, counsel recounts the alleged abuse perpetrated against the petitioner and her children by her former and reasserts that the petitioner's former spouse "eventually los[t] his status as a Legal Permanent Resident" due being convicted of such abuse.

As explained in the prior decision of the AAO, incorporated here by reference, Citizenship and Immigration Services (CIS) records show that the petitioner's former husband lost his immigrant status due to a conviction for a federal offense in June 2003 that is not classified as a domestic violence crime and for which the conviction record does not indicate any relation to domestic violence or involvement of the petitioner or her children. As acknowledged in our prior decision, the record shows that the petitioner's husband was convicted in 2004 of a domestic violence crime against the petitioner. However, that conviction is not the offense that caused his deportation and loss of immigrant status. Accordingly, the petitioner has not established that her former husband lost his status due to an incident of domestic violence, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act. As the petitioner has not demonstrated the requisite qualifying relationship, she has also not established her eligibility for preference immigrant classification based on such a relationship, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The petition remains denied.