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



U.S. Citizenship  
and Immigration  
Services

*BS*

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAR 05 2008**  
EAC 05 161 52629

IN RE: Petitioner: [REDACTED]

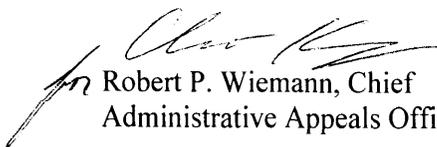
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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 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.

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

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 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].

In this case, the director initially denied the petition on December 21, 2005, for failure to establish the requisite battery or extreme cruelty. In our September 7, 2006 decision on appeal, we concurred with the director's determination 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 November 6, 2006, which afforded the petitioner the opportunity to submit further evidence to establish his claim of abuse. The petitioner responded with additional evidence, which the director found was not sufficient to establish the requisite abuse. Accordingly, the director denied the petition on February 16, 2007 based upon the petitioner's failure to establish that he was battered or subjected to extreme cruelty by his spouse.

The relevant evidence submitted below was fully addressed in our prior decision, incorporated here by reference. In response to the NOID, the petitioner submitted a letter, a statement from a friend, a past-due loan payment notice, and a copy of a check. In his certification decision, the director found that neither the petitioner's letter nor the petitioner's friend's statement "contains new information" which would establish his eligibility. We concur with the director's determination. The letter from the petitioner and statement from [REDACTED] contain no further probative details regarding the petitioner's claim of abuse and offer no new information to establish his claim of abuse. Moreover, we

had previously dismissed the petitioner's claim of economic abuse and similar evidence of past-due notices noting that the evidence in the record indicated that the petitioner had access to finances and accounts and use of his own money and stating that past due accounts do not establish that the petitioner's spouse "asserted economic control over the petitioner." The petitioner offered no new evidence to establish that his spouse exerted any economic control over him.

On certification, as it relates to his claim of abuse, the petitioner submits evidence that his spouse withdrew two petitions for divorce prior to the petitioner's final divorce. The petitioner claims that these documents are evidence that his spouse was trying to "take advantage" of him because of his immigration status. He claims that if he disagreed with his spouse or would not give her money, his spouse would threaten to "run to the courthouse and ask for divorce and then call Immigration to have me deported." We are not persuaded by the petitioner's claims. The documents submitted by the petitioner on certification were dated April 2004 and February 2005. However, in the statement submitted by the petitioner at the time of filing, the petitioner stated that it was not until the end of April 2005 that his spouse began threatening him. In his second statement, the petitioner claimed that his spouse's behavior began to change in November 2004. We also note that the petitioner failed to allege that his spouse threatened him in this manner in either of his two previous statements. Given the discrepancies in dates and the petitioner's failure to have previously asserted the claim regarding his spouse's threats for divorce and deportation, the petitioner's new claim on certification is not sufficient **to establish his claim of abuse. We are not convinced that the petitioner's spouse's filing and withdrawal of divorce papers on two occasions prior to their final divorce is evidence of abuse rather than being indicative of the petitioner's admittedly troubled marriage.**

Upon review, we concur with the director's determination that the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 February 16, 2007 is affirmed. The petition is denied.