

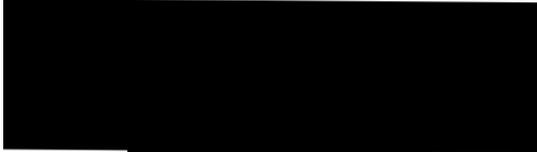
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
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FILE: [REDACTED]
EAC 05 198 52410

Office: VERMONT SERVICE CENTER

Date: **MAR 05 2008**

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 October 3, 2005, finding that the petitioner failed to establish that he had a qualifying relationship as the spouse of a United States citizen. In our April 11, 2006 decision on appeal, we concurred with the director's determination and further found that the petitioner had failed to establish that he was battered or subjected to extreme cruelty by his former spouse during their marriage and that his divorce was connected to the claimed abuse, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. However, we 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 June 26, 2006, which afforded the petitioner the opportunity to establish his qualifying marriage and the requisite abuse and its connection to the termination of his marriage. The petitioner responded with additional evidence, which the director found sufficient to establish the requisite abuse. The director denied the petition on January 18, 2007, finding that the petitioner failed to establish that he had a qualifying relationship and certified her decision to the AAO for review. No further evidence has been submitted on certification. Accordingly, we consider the record to be complete as it now stands.

The relevant evidence submitted below was fully addressed in our prior decision, incorporated here by reference. In response to the NOID, the petitioner submitted additional affidavits that discussed his

claim of abuse. As indicated above, the director found this evidence sufficient to establish the petitioner's claims. Although the director did not affirmatively indicate that the petitioner had also established that the abuse was connected to the termination of his marriage, we make this finding here. However, as no further evidence was submitted regarding the petitioner's qualifying relationship, we concur with the director's determination that the petitioner failed to establish that he had a qualifying relationship with his spouse, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, because he was divorced from his former wife over two years before this petition was filed. Beyond our previous decision and the decision of the director, we additionally find that because the petitioner failed to establish a qualifying relationship, he has also failed to establish that he was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.

ORDER: The director's decision of January 18, 2007 is affirmed. The petition is denied.