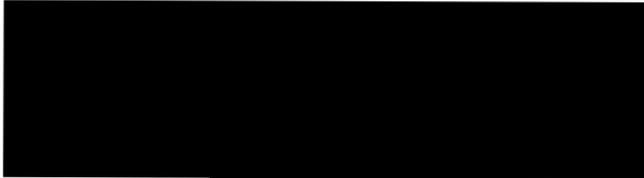


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invasion of personal privacy



U.S. Citizenship  
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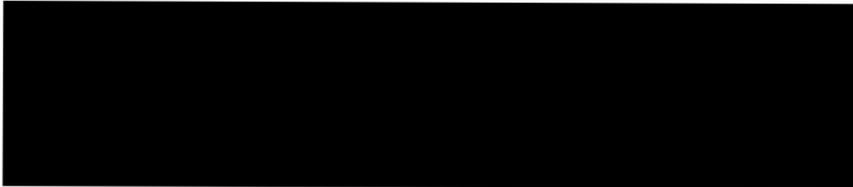
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: MAR 05 2008  
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IN RE: Petitioner: [Redacted]

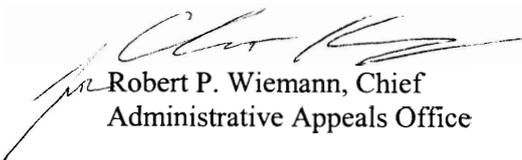
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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 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)(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 United States citizen.

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)(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 16, 2003, finding that the petitioner failed to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States because she filed her petition more than two years after her spouse lost his permanent resident status. In our June 12, 2006 decision on appeal, we withdrew the director's finding but found that the petitioner failed to establish her eligibility because she failed to establish that her spouse lost his permanent resident status due to an incident of domestic violence. 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 August 15, 2006, which afforded the petitioner an opportunity to establish the requisite qualifying relationship. The petitioner failed to respond to the director's NOID. Accordingly, the director denied the petition on January 4, 2007, based on the ground cited in the NOID. The director certified her decision to the AAO for review and notified the petitioner, through counsel, that she could submit a brief to the AAO within 30 days of service of the director's decision. To date, the AAO has received nothing further from the petitioner or counsel. Accordingly, the record is considered to be complete as it now stands.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has submitted no further brief or evidence since the issuance of that decision. Accordingly, because the petitioner has not demonstrated that her spouse lost his permanent resident status within the two-year period prior to filing the petition *due to an incident of domestic violence*, the petitioner has not established that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States pursuant to section 204(a)(1)(B)(ii)(aa)(CC)(aaa) of the Act. In addition, beyond our previous decision and that of the director, we find the petitioner has also failed to establish that she was eligible for immigrant classification based upon that relationship as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

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. Accordingly, the January 4, 2007 decision of the director is affirmed and the petition is denied.

**ORDER:** The director's decision of January 4, 2007 is affirmed. The petition is denied.