

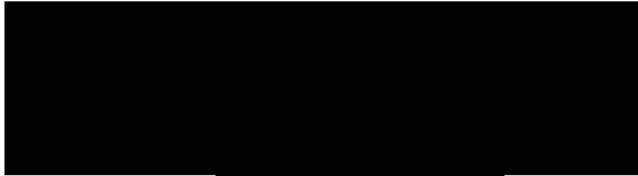
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAR 05 2008**
EAC 04 195 50869

IN RE: Petitioner: [REDACTED]

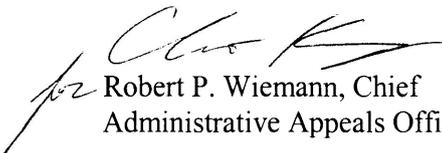
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

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.


for 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 February 16, 2007 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 further 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 8, 2005, 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 and that she was eligible for immigrant classification based upon that relationship. In our August 9, 2006 decision on appeal, we concurred with the director's determinations and further found that the petitioner had not established her good moral character and good faith marriage. 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 September 14, 2006, which afforded the petitioner the opportunity to establish her qualifying relationship, eligibility for preference classification, good moral character and good faith marriage. The petitioner, through counsel, responded with additional evidence, which the director found sufficient to establish the petitioner's good faith marriage but not the requisite qualifying relationship, eligibility for preference classification, and good moral character. Accordingly, the director denied the petition on these latter three grounds on February 16, 2007 and certified his decision to the AAO for review.

On certification, counsel for the petitioner acknowledged receipt of the director's certification, despite the fact that it was sent to the petitioner's former counsel. Counsel then indicated the withdrawal of his representation of the petitioner. However, counsel did not indicate that a brief or further evidence was submitted and no additional brief or evidence was submitted by the petitioner. 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, as it relates to her qualifying relationship and eligibility for preference classification and good moral character, the petitioner submitted a letter from her employer, and affidavits from four friends and relatives, as well as copies of documents previously submitted. In addition, the petitioner provided a brief from counsel who argued that the director was "splitting hairs to affirm without consideration that [the petitioner's spouse] was not deported because of domestic violence." Counsel also requests that Citizenship and Immigration Services (CIS) apply "prosecutorial discretion ... based on the particular circumstances in this case" We are not persuaded by counsel's arguments or request. As previously discussed in both the director's decision and our prior decision, CIS records show that the petitioner's spouse was deported on three grounds, none of which related to domestic violence. The statute does not provide for any waivers or use of discretion to overcome the requirement that an abusive spouse's loss of permanent resident status be due to an incident of domestic violence. Sec. 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act, 8 U.S.C. §1154(a)(1)(B)(ii)(II)(aa)(CC)(aaa). Accordingly, we concur with the finding of the director that the petitioner has failed to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States and that she is eligible for preference classification based upon that relationship.

As it relates to her good moral character, in response to the NOID, the petitioner submitted affidavits from the petitioner's employer, friends, and family. However, the regulation at 8 C.F.R. § 204.2(c)(2)(v) specifies that primary evidence of the petitioner's good moral character is an affidavit from the petitioner accompanied by a police clearance from each place the petitioner has lived for at least six months during the 3-year period immediately preceding the filing of the self-petition. Although counsel indicated that, "due to time sensitivity . . . it was impossible to obtain an official F.B.I. clearance," counsel did not indicate that the petitioner attempted to obtain a clearance or provide any evidence that local police clearances were not available. Without evidence that police clearances are unavailable, counsel's statements and the affidavits submitted on the petitioner's behalf are not sufficient to establish the petitioner's good moral character. Accordingly, we concur with the director's determination that the petitioner has failed to establish her good moral character.

As discussed above, we concur with the director's determination that the petitioner failed to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States, that she is eligible for preference classification based upon that relationship and that she is a person of good moral character. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

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 February 16, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The February 16, 2007 decision of the director is affirmed.