

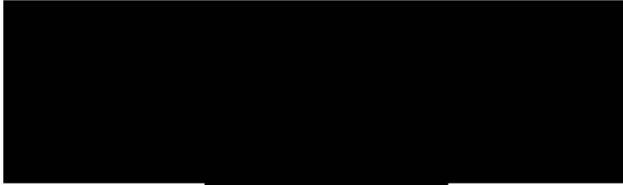
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
EAC 05 121 51481

Office: VERMONT SERVICE CENTER

Date: MAR 11 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:



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.

Laura Beadnick
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 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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 June 24, 2005 for failure to establish a qualifying relationship because the record showed that the petitioner had divorced her husband more than two years before the petition was filed. In its October 19, 2006 decision on appeal, the AAO concurred with the director's determinations, but further found that the petitioner had failed to demonstrate her eligibility for immediate relative classification based on a qualifying relationship and the requisite battery or extreme cruelty. The AAO nonetheless 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 28, 2006, which informed the petitioner, through counsel, that she had failed to establish a qualifying relationship, corresponding eligibility for immigrant classification and the requisite battery or extreme cruelty. Neither the petitioner nor counsel responded to the NOID. Accordingly, the director denied the petition on April 6, 2007 on the grounds cited in the NOID. In his Notice of Certification, the director informed the petitioner, through counsel,

that she could submit a brief to the AAO within 30 days after service of the certified decision. To date, the AAO has received nothing further from the petitioner or counsel.

The relevant evidence submitted below was discussed in our prior decision, incorporated here by reference. Citizenship and Immigration Services (CIS) has received no further evidence or brief from counsel or the petitioner since that decision was issued. Accordingly, the April 6, 2007 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that she had a qualifying relationship with her former husband at the time of filing, that she was eligible for immigrant classification based on such a relationship and that her former husband subjected her or her child to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The denial of the petition will be affirmed for the reasons stated above, with each considered 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. The petitioner has not sustained that burden.

ORDER: The director's decision of April 6, 2007 is affirmed. The petition is denied.