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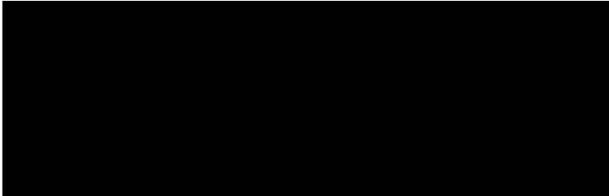
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 05 216 50378

Office: VERMONT SERVICE CENTER

Date: **MAR 26 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.

Maura Dladnick
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 November 15, 2005 for failure to establish the requisite battery or extreme cruelty. In its May 31, 2006 decision on appeal, the AAO concurred with the director's determinations 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 October 4, 2006, which informed the petitioner that she had failed to establish the requisite battery or extreme cruelty. The petitioner submitted materials in response to the NOID, which the director found insufficient to establish her eligibility. Accordingly, the director denied the petition on February 16, 2007 on the ground cited in the NOID and certified his decision to the AAO for review. On certification, the petitioner submits copies of documents previously filed.

The pertinent facts and relevant evidence submitted below were discussed in our prior decision, incorporated here by reference. Hence, we will only address the relevant evidence submitted after that decision was issued. In response to the NOID, the petitioner submitted a signed statement dated October 19, 2006, which is nearly identical to the unsigned statement she submitted on appeal and a letter from [REDACTED] Psychological Assistant at the Community Health Awareness Council in Mountain View, California. As noted by the director, the petitioner's October 19, 2006 statement contains no new information, but merely repeats claims made previously regarding her husband's

imprisonment, abandonment and tax debt. Both the director and the AAO found the petitioner's testimony insufficient to establish battery or extreme cruelty and we do not repeat those discussions here.

letter is also insufficient to establish the petitioner's claim. [REDACTED] merely confirms that the petitioner attended six psychotherapy sessions nearly one year after she reports separating from her husband for "treatment of psychological hardship" arising from the petitioner's marriage. [REDACTED] does not describe the particular psychological hardship or provide any further, probative details regarding the petitioner's mental health.

The February 16, 2007 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that her 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.

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.