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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

B9



FILE:

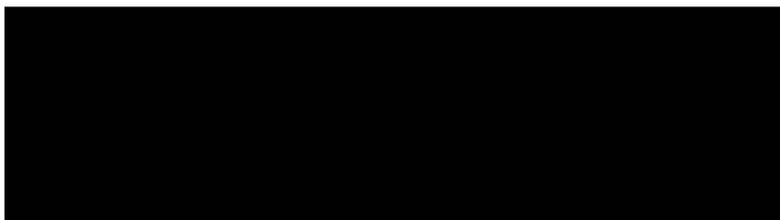
EAC 04 096 52158

Office: VERMONT SERVICE CENTER

Date: MAR 26 2008

IN RE:

Petitioner:



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.

Maura Deadrick
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).

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 May 26, 2005 for failure to establish the requisite battery or extreme cruelty and good moral character. In its May 22, 2006 decision on appeal, the AAO concurred with the director's determination regarding battery or extreme cruelty, but found that the petitioner had established her good moral character through evidence submitted both below and on appeal. In addition, the AAO determined that the petitioner had not established that she entered into her marriage in good faith. 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 December 4, 2006, which informed the petitioner, through counsel, that she had failed to establish the requisite battery or extreme cruelty and her good-faith entry into her marriage. Neither the petitioner nor counsel responded to the NOID. Accordingly, the director denied the petition on May 7, 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 of service of the certified decision. To date, the AAO has received nothing further from the petitioner or counsel.

The pertinent facts and relevant evidence submitted below were 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 May 7, 2007 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that her husband subjected her or any of her children to battery or extreme cruelty during their marriage and that she entered their marriage in good faith. 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 May 7, 2007 is affirmed. The petition is denied.