

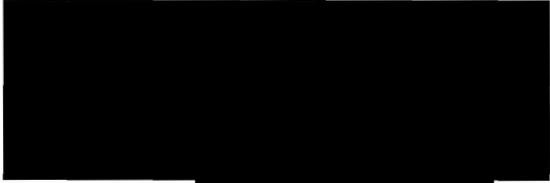


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B9



FILE: [REDACTED]
EAC 05 247 52597

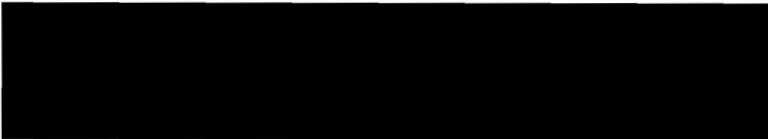
Office: VERMONT SERVICE CENTER

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:



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
fe 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 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 good-faith entry into the marriage, shared residence and good moral character. In its June 12, 2006 decision on appeal, the AAO concurred with the director's determination regarding good-faith marriage and good moral character, but found that evidence submitted on appeal demonstrated that the petitioner had resided with her husband. The AAO further determined that the petitioner had not established that she had a qualifying relationship with her husband at the time the petition was filed. 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 October 6, 2006, which informed the petitioner, through counsel, that she had failed to establish the requisite qualifying relationship, good-faith entry into her marriage and her good moral character. The NOID provided the petitioner with a final opportunity to submit evidence to establish her eligibility on these three grounds. However, neither the petitioner nor counsel responded to the NOID. Accordingly, the director denied the petition on February 16, 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 pertinent facts and relevant evidence submitted below were discussed in our June 12, 2006 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 February 16, 2007 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that she had a qualifying relationship at the time this petition was filed, that she married her husband in good faith and that she is a person of good moral character.

Beyond our June 12, 2006 decision and the director's February 16, 2007 decision, we further find that the petitioner has not established her eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. Because the petitioner has not established that she had a qualifying relationship with her husband at the time this petition was filed, she has also failed to demonstrate that she was eligible for immediate relative classification based on such a relationship. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on this additional ground.

We note that the AAO maintains plenary power to review each case 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 denial of the petition will be affirmed for the four 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 February 16, 2007 is affirmed. The petition is denied.