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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 08 2008

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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.


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, 8 U.S.C. § 1154(a)(1)(J) 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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. In this case, the director initially denied the petition on September 1, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage and that he entered into his marriage in good faith. In our May 31, 2006 decision on appeal, we concurred with the director's determinations. In addition, we noted that the petitioner needed to provide clarification regarding his marital status. However, we remanded the petition for issuance of a Notice of Intent to Deny (NOID), as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹ Upon remand, the director issued a NOID on July 11, 2006, which informed the petitioner, through counsel, of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish the requisite abuse, residence, good faith marriage, and qualifying relationship.² The petitioner failed to respond to the

¹ On April 17, 2007, Citizenship and Immigration Services (CIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100-19107. The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

² The director's request for further evidence regarding the petitioner's residence with his spouse in the NOID appears to have been in error. Neither the director nor the AAO had previously found the

director's NOID. Accordingly, the director denied the petition on March 9, 2007, based on the grounds cited in the NOID. The director certified his decision to the AAO for review and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. As no further submission has been received, the record is considered to be complete as it now stands.

Upon review, we concur with the director's determinations. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner submitted no further brief or evidence since the issuance of that decision. Accordingly, the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, that he entered into his marriage in good faith, and that he has a qualifying relationship as the spouse of a United States citizen. Further, as the petitioner has failed to establish a qualifying relationship, beyond the decision of the director, the petitioner has also failed to establish that he is eligible for immigrant classification based upon a qualifying relationship. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The AAO maintains plenary power to review each appeal 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 petition will be denied for the reasons stated above, 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 March 9, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The director's decision of March 9, 2007 is affirmed. The petition is denied.

petitioner's evidence insufficient to establish residence. We, therefore, withdraw this particular finding of the director.