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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:

EAC 05 157 52716

Office: VERMONT SERVICE CENTER

Date: **OCT 25 2007**

IN RE:

Petitioner:



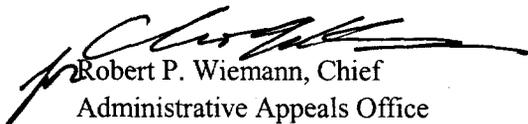
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The December 19, 2006 decision of the director will be affirmed and the petition will be denied.

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 further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , 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. The director initially denied the petition on January 4, 2006, based upon the finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage. On appeal, the AAO concurred with the findings of the director. In addition, the AAO found that the petitioner failed to establish that she is a person of good moral character because she failed to submit police clearances from all places she had resided during the 3-year period prior to filing. However, the AAO remanded the case because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on August 30, 2006, in accordance with the AAO's August 9, 2006 remand decision. The petitioner, through counsel, timely responded to the director's NOID with additional evidence. On December 19, 2006, after addressing the statements made in counsel's brief and the additional evidence received into the record, the director found that the petitioner had sufficiently established that she is a person of good moral character. However, the director found that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage. The director's discussion will not be repeated here. The director certified her decision to the AAO for review and notified the petitioner, through counsel, that she could submit a brief to the AAO within 30 days of service of the director's decision. In response to the director's certification notice, counsel submitted a letter and an affidavit from the petitioner. While counsel's letter also indicated that a letter from [REDACTED] "NJ Domestic Violence Specialist," would be submitted "in the near future," no further evidence has been received. Accordingly, the record is considered complete as it now stands.

Upon review, we concur with the director's determination. As all of the relevant evidence submitted prior to the AAO's remand has been adequately discussed, our review will focus on the evidence related to the petitioner's claim of abuse submitted in response to the director's NOID and the director's certification decision. The evidence consists of two articles and an affidavit from the petitioner. Counsel submitted the

articles as evidence to support the petitioner's claim that she was reluctant to start counseling because in her culture, "counseling is associated with people who have developed mental problems because of drug use." While we do not dispute the petitioner's contention or the content of the articles, the timing of the petitioner's counseling is only one of many issues cited by the AAO and the director in determining that the petitioner had failed to meet her burden in establishing her claim of abuse. For instance, in our previous decision we cited the discrepancy between the petitioner's claim that she attempted suicide and the hospital report in which the petitioner claimed she was actually injured in a sewing accident. We further noted that while the petitioner submitted photographs, described by counsel as evidence of the petitioner's "healed scar," we could discern no scar in the photograph. Counsel questions the AAO's expertise as "forensic specialists" and "suicide experts," and states that "it is not unusual for those who make suicide attempts to simply make an excuse for why they injured themselves." However, although the petitioner submits an additional affidavit on appeal, her affidavit does not provide any explanation regarding the discrepancy noted in the AAO decision. Without any explanation from the petitioner herself, the unsupported assertion of counsel that the petitioner was making "an excuse" for why she was really injured, does not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Accordingly, we concur with the findings of the director that the petitioner has not established that she was battered or subjected to extreme cruelty by her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The record contains unexplained discrepancies as well as insufficient testimonial and documentary evidence to support the petitioner's claim of abuse. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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 December 19, 2006 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The December 19, 2006 decision of the director is affirmed.