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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 05 056 53191

Office: VERMONT SERVICE CENTER

Date: **MAR 26 2008**

IN RE:

Petitioner:



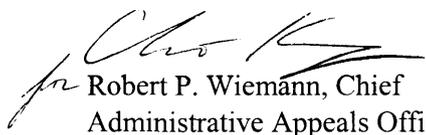
PETITION: Petition for Immigrant Abused Child Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

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.


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 AAO will withdraw the director's March 16, 2007 decision; however, because the petition is not approvable, it is remanded for further action and consideration.

The petitioner seeks classification pursuant to section 204(a)(1)(A)(iv) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien battered or subjected to extreme cruelty by his United States citizen stepparent.

Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act (the Act) provides, in pertinent part:

An alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) [of the Act], and who resides, or has resided in the past, with the citizen parent may file a petition with the [Secretary of Homeland Security] under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the [Secretary of Homeland Security] that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent.

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 December 6, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his citizen stepparent and that he was a person of good moral character. On appeal, the AAO concurred with the findings of the director but 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 to the petitioner's former counsel of record on October 16, 2006, finding that the petitioner had established his good moral character but noting deficiencies regarding the petitioner's claim of abuse. In response to the NOID, former counsel indicated that no further evidence would be submitted. The director denied the petition on March 16, 2007 and certified the decision to the AAO. In his decision, the director notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. To date, the AAO has received nothing further from the petitioner.

Upon review, we find that the director's final certification decision was improperly issued as it was issued to the petitioner at his former address.¹ In his February 6, 2006 letter submitted on appeal, the petitioner notified Citizenship and Immigration Services (CIS) of his new address and requested that all correspondence be sent to his new address. Upon remand, the director must issue a new certification notice to the petitioner at his address of record. *See* 8 C.F.R. §§ 103.4(a)(2), 103.5a(a)(1). As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new decision to the petitioner at his address of record, which, if adverse to the petitioner, is to be certified to the AAO for review.

¹ The certification decision was returned by the U.S. Postal Service on March 22, 2007 as "Attempted-Not Known Unable to Forward."