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U.S. Citizenship
and Immigration
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89

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **MAY 27 2008**

EAC 04 246 53318

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:

[REDACTED]

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.

Mari Plummer

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 September 22, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage. In our May 8, 2006 decision on appeal, we concurred with the director's determination and further found that the petitioner failed to establish that he resided with his spouse. However, we remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006). Upon remand, the director issued a NOID on July 26, 2006, which informed the petitioner, through counsel, that he failed to establish the requisite abuse and residence. The petitioner failed to respond to the director's NOID. Accordingly, the director denied the petition on February 7, 2007, based on the grounds cited in the NOID. The director certified his decision to the AAO for review and notified the petitioner, through counsel, 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 or counsel. Accordingly, the record is considered to be complete as it now stands.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has 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 and that he resided with his spouse.

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 February 7, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The director's decision of February 7, 2007 is affirmed. The petition is denied.