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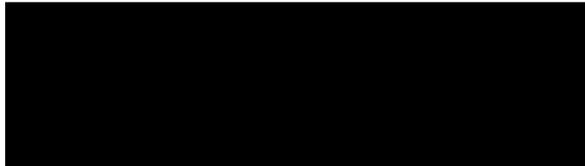
U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 15 2007**

EAC 05 135 52884

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:

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 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).

An alien who has divorced a United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person:

who was a bona fide spouse of a United States citizen within the past 2 years and –

\* \* \*

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.

Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC).

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].

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico. On May 7, 2003, the petitioner married A-H-<sup>1</sup> a U.S. citizen, in Tennessee. On August 5, 2004, the couple was divorced by order of the Circuit Court for the Third Judicial District, Rogersville, Hawkins County, Tennessee. The petitioner filed this Form I-360 on April 8, 2005. On July 19, 2005, the director issued a notice explaining the insufficiency of the relevant evidence submitted with the petition and asked the petitioner to submit, *inter alia*, additional evidence to establish that she had a qualifying relationship as the former spouse of a United States citizen, that she was eligible for classification based upon that relationship, that her former spouse battered or subjected her to extreme cruelty during their marriage, and that she is a person of good moral character. On October 14, 2005, the director denied the petition because the record did not establish the requisite qualifying relationship, eligibility for classification based upon that relationship, battery or extreme cruelty, and good moral character. The petitioner timely appealed.

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<sup>1</sup> Name withheld to protect individual's identity.

On appeal, 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 June 23, 2006 in accordance with the AAO's April 26, 2006 decision. Specifically, the director indicated that the record lacked evidence of the petitioner's qualifying relationship as the spouse of a United States citizen, that she was eligible for classification based upon that relationship, that she was battered by or subjected to extreme cruelty by her spouse, that she is a person of good moral character, that she resided with her spouse and that she entered into her marriage in good faith. The petitioner failed to respond to the NOID. Accordingly, the director denied the petition on December 19, 2006 on the grounds cited in the NOID. The director certified her decision to the AAO for review and notified the petitioner that she 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 concur with the director's determination. The relevant evidence submitted below was discussed in the April 26, 2006 decision of the AAO, which is incorporated here by reference. The petitioner has submitted no further brief or evidence since that decision was issued. Accordingly, the petitioner has not established that her former spouse subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act, that her divorce was connected to her former spouse's battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act to establish a qualifying relationship and eligibility for immediate relative classification, and that she is a person of good moral character in accordance with 204(a)(1)(A)(iii)(II)(bb). The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, 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 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.