

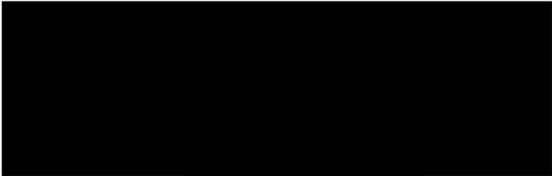
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FILE: [Redacted]
EAC 05 108 53623

Office: VERMONT SERVICE CENTER

Date: AUG 22 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.


for 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 February 16, 2007 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].

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Canada. On August 2, 2001, the petitioner married C-T-,¹ a U.S. citizen, in Phoenix, Arizona. On November 22, 2002, the couple was divorced in the Arizona Superior Court, County of Maricopa. The petitioner filed this Form I-360 on March 7, 2005. On June 21, 2005, the director denied the petition because the petitioner failed to establish that she had the requisite qualifying relationship. The petitioner, through counsel, timely appealed.

On appeal, the AAO affirmed the director's finding regarding the petitioner's failure to establish a qualifying relationship and found, in addition, that the petitioner failed to establish that she was battered by or subjected to extreme cruelty by her citizen spouse and that she entered into her marriage in good faith. 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 2, 2006 in accordance with the AAO's June 12, 2006 decision. The petitioner failed to respond to the NOID. Accordingly, the director denied the petition on February 16, 2007 on the grounds cited in the NOID. The director certified his 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 petitioner has not submitted any further evidence to support the petition.²

¹ Name withheld to protect individual's identity.

² On March 1, 2007, counsel for the petitioner indicated that she wished to withdraw her Form I-360 because she remarried and filed for adjustment of status. While the petitioner could have withdrawn the Form I-360 at any time prior to the director's June 21, 2005 decision or withdrawn the appeal prior to the AAO's June 12, 2006 decision, the matter is now before us on the director's request for certification and may not be withdrawn. See 8 C.F.R. §§ 103.2(b)(6), 103.3(a)(2)(ix).

Upon review, we concur with the director's determination and our previous decision. The relevant evidence was discussed in the June 12, 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 she has a qualifying relationship as the former spouse of a United States citizen as required by section 204(a)(1)(A)(iii)(II)(aa)(CC), 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, and that she entered into her marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Consequently, the petitioner is 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 February 16, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The February 16, 2007 decision of the director is affirmed.