

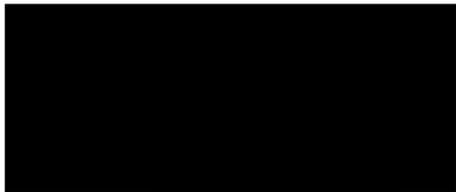
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
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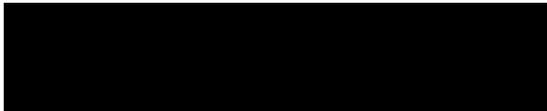
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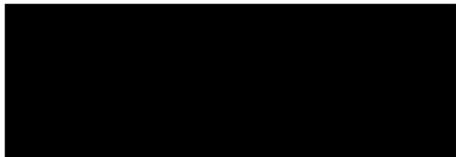
IN RE:

Petitioner:



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

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 18, 2006 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the 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 a preference immigrant under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

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

who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

* * *

(bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse[.]

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

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat them here as necessary. The director initially denied the petition on January 9, 2006, based upon the finding that the petitioner failed to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States because she was divorced over 11 years before the petition was filed. On appeal, the AAO concurred with the finding 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). Additionally, the AAO determined that the petitioner failed to establish that she was eligible for preference immigrant classification and that she is a person of good moral character. Upon remand, the director issued a NOID on October 3, 2006 in accordance with the AAO's August 21, 2006 remand decision. The petitioner timely responded to the director's NOID. After considering the evidence submitted in response to the NOID, the director denied the petition on December 18, 2006, finding that although the petitioner had adequately established her good moral character, she failed to establish that she has a qualifying relationship as the spouse of a lawful permanent resident of the United

States and that she is eligible for preference immigrant classification based upon that relationship. 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. On January 11, 2007, the petitioner submitted a brief statement and copies of evidence already contained in the record.

Upon review, we concur with the findings of the director. In response to the certification, the petitioner reasserts her previous claim that her divorce was fraudulently obtained. This argument was already considered and dismissed by both the AAO and the director who indicated that the petitioner failed to provide any evidence to show that her divorce judgment had been "invalidated, withdrawn or modified; or that it is otherwise considered invalid under New York law." Without evidence to demonstrate that her divorce was invalid, the petitioner is not able to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States and that she is eligible for classification based upon that relationship, as required by sections 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) and (II)(cc) of the Act.

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 18, 2006 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The December 18, 2006 decision of the director is affirmed.