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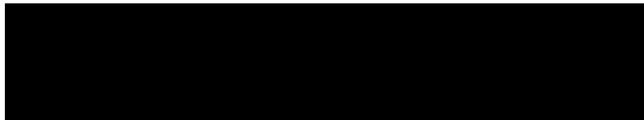
Office: VERMONT SERVICE CENTER

Date: JUL 10 2007

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special 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.

Maura Deadrick
fu 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 case 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 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 July 20, 2005 for lack of the requisite battery or extreme cruelty. In its June 2, 2006 decision on appeal, the AAO concurred with the director's determination that the petitioner had not established the requisite battery or extreme cruelty, but the AAO remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Upon remand, the director issued a NOID on August 29, 2006, which informed the petitioner that he had not established that his wife battered or subjected him to extreme cruelty during their marriage. The NOID granted the petitioner 60 days to submit a response and any additional evidence. In a letter dated October 18, 2006, counsel stated, "we have no other evidence to provide in support of the spousal abuse petition." Accordingly, the director denied the petition on December 19, 2006 on the ground cited in the NOID and certified the decision to the AAO for review.

The director's Notice of Certification informed the petitioner that he had 30 days to submit a brief to the AAO. To date, over six months after the director issued the Notice of Certification, the AAO has received nothing further from counsel or the petitioner. Accordingly, the December 19, 2006 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that his wife

battered or subjected him to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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. The petitioner has not sustained that burden.

ORDER: The director's decision of December 19, 2006 is affirmed. The petition is denied.