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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
EAC 05 072 52924

Office: VERMONT SERVICE CENTER

Date: **SEP 12 2007**

IN RE: Petitioner: [Redacted]

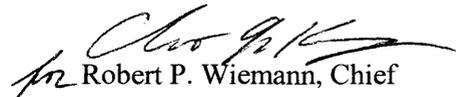
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


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).

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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. The director initially denied the petition on October 27, 2005, based upon the finding that the petitioner failed to establish that she entered into her marriage in good faith. On appeal, the AAO concurred with the findings 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). Upon remand, the director issued a NOID on August 7, 2006 in accordance with the AAO's June 2, 2006 remand decision. The petitioner, through counsel, timely responded to the director's NOID by submitting a brief and a copy of interview notice regarding a petition filed on the petitioner's behalf by her sister. On December 19, 2006, after addressing the statements made in counsel's brief, the director found that the petitioner failed to establish that she entered into her marriage in good faith. The director's discussion will not be repeated here. 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.

Upon review, we concur with the director's determination. The relevant evidence was previously discussed in the June 2, 2006 decision of the AAO, which is incorporated here by reference. No additional, relevant evidence has been submitted since that decision was issued. Counsel's general statement in response to the director's NOID that the AAO "forgot[sic] about the any credible evidence standard and is expecting the witnesses to remember incredible details about another person's marriage" was properly addressed and dismissed by the director.

While counsel did submit two letters dated January 4, 2007 and July 25, 2007, respectively, the letters were not responsive to the certification or the grounds for denial of the petition. Rather, in the letters, counsel indicates that the petitioner "discontinued pursuit" of and "withdrew" the Form I-360 petition. However, upon review, we find that the record contains no prior indication from counsel or the petitioner that the petitioner intended to "discontinue" or withdraw her Form I-360 petition or subsequent appeal.

As discussed above, the petitioner has not established 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.

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.