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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: FEB 14 2008

EAC 05 191 50764

IN RE:

Petitioner:

[Redacted]

PETITION:

Petition for Immigrant Abused 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:

[Redacted]

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
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 matter 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 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 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].

In this case, the director initially denied the petition on November 16, 2005 for failure to establish the requisite battery or extreme cruelty. In our July 10, 2006 decision on appeal, we concurred with the director's determination but 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 October 24, 2006 which informed the petitioner, through counsel, that he had failed to establish that his former wife subjected him to battery or extreme cruelty during their marriage. The petitioner timely responded to the NOID with additional evidence, which the director determined did not establish the petitioner's eligibility. On March 16, 2007, the director denied the petition on the ground cited in the NOID and certified his decision to the AAO for review. The director informed the petitioner that he could submit a brief to the AAO within 30 days of the issuance of the certified decision. To date, the AAO has received nothing further from the petitioner or counsel.

The relevant evidence submitted below was discussed in our prior decision, incorporated here by reference. Accordingly, we will only address the evidence submitted after that decision was issued. In response to the NOID, the petitioner submitted an affidavit of his friend, [REDACTED] [REDACTED] states that on one occasion when the former couple was visiting his home, the petitioner's former wife told him she wanted to leave and called the petitioner a derogatory name. On other, unspecified occasions,

██████████ reports that he witnessed the petitioner and his former wife arguing. ██████████ further states that the petitioner once asked if he could stay at ██████████'s home because he and his former wife were continuously arguing. ██████████ says that the petitioner told him that his former wife tried to exercise total control over the petitioner and that she used language that "one might construe [as] threatening and violent." Yet ██████████ does not indicate that he ever witnessed the petitioner's former wife exerting control over the petitioner or using threatening and violent language. ██████████ fails to provide detailed, probative information sufficient to establish the petitioner's claim.

Upon review, we concur with the director's determination. The petitioner has failed to demonstrate that his former wife subjected him to battery or 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 March 16, 2007 is affirmed. The petition is denied.