

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

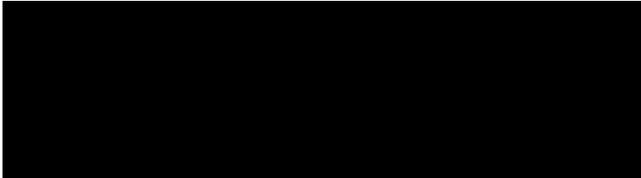
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

By



FILE:

EAC 05 008 52617

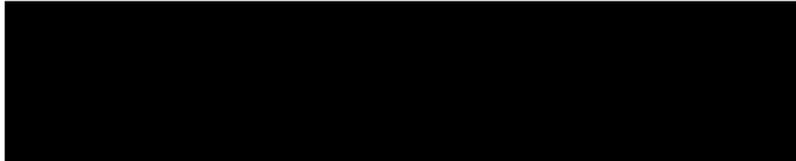
Office: VERMONT SERVICE CENTER

Date:

FEB 26 2008

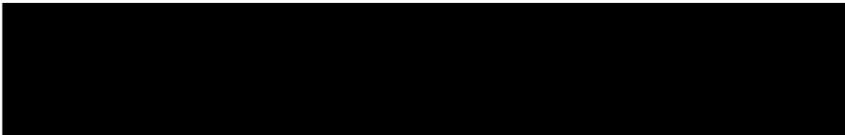
IN RE:

Petitioner:



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:



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
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 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 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 June 29, 2005 for failure to establish the requisite battery or extreme cruelty. In its July 6, 2006 decision on appeal, the AAO concurred with the director's determination. In addition, the AAO found that the petitioner had not established the requisite qualifying relationship and that she entered into her marriage in good faith. 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 October 16, 2006, which informed the petitioner, through counsel, that she had failed to establish the requisite battery or extreme cruelty, qualifying relationship and good-faith entry into her marriage. In response, the petitioner submitted additional evidence. The director determined that the new evidence failed to establish that the petitioner's former husband had battered or subjected her or either of her children to extreme cruelty during their marriage and denied the petition on this ground on January 17, 2007. In his Notice of Certification, the director informed the petitioner, through counsel, that she could submit a brief to the AAO within 30 days after service of the certified decision. To date, the AAO has received nothing further from counsel or the petitioner.

Upon review, we concur with the director's determination. 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 the following, relevant evidence: copies of forms from the Women's Aid Clinic signed by the petitioner on October 13, 2003 and supporting statements from the petitioner's friends, [REDACTED] and [REDACTED]. The director fully addressed the latter statements and explained their lack of detailed, probative information sufficient to establish the requisite battery or extreme cruelty. We concur with the director's assessment and do not repeat his discussion here.

The forms from the Women's Aid Clinic also fail to establish battery or extreme cruelty. The forms were submitted with the accompanying, unsigned statement: "Petitioner's medical records regarding the force [sic] abortion conducted during her marriage." The forms confirm that the petitioner was pregnant and signed a statement informing her of the potential psychological effects of terminating a pregnancy on October 13, 2003. The forms do not, however, indicate that the petitioner's former husband coerced her to terminate her pregnancy and the documents provide no further, probative information. Moreover, the record contains no previous mention of the petitioner's pregnancy and the circumstances leading to its termination. The petitioner provides no explanation for why this documentation was submitted for the first time in response to the NOID. Accordingly, we concur with the director's determination that the clinic forms do not establish that the petitioner's former husband battered or subjected her to extreme cruelty during their marriage.

The petitioner has not established that her former husband subjected her or either of her children to battery or extreme cruelty during their marriage and she is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Accordingly, the January 17, 2007 decision of the director denying the petition is affirmed.

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 January 17, 2007 is affirmed. The petition is denied.