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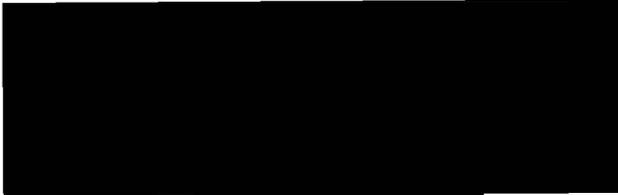
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 05 136 50797

Office: VERMONT SERVICE CENTER

Date: **JUL 10 2008**

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:



**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.

A handwritten signature in cursive script, appearing to read "Maie Johnson".

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, 8 U.S.C. § 1154(a)(1)(J) 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 certain facts as necessary here. In this case, the director initially denied the petition on November 3, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his former spouse during their marriage. In our June 23, 2006 decision on appeal, we concurred with the director's determination. However, we remanded the petition for issuance of a Notice of Intent to Deny (NOID), as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii) (2006).<sup>1</sup> Upon remand, the director issued a NOID on August 2, 2006, which informed the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish the requisite abuse. In a letter dated September 19, 2006, counsel for the petitioner requested additional time in which to respond to the NOID. The director granted the petitioner's request for additional time on December 6, 2006. The petitioner, however, failed to further respond to the director's NOID. Accordingly, the director denied the petition on March 29, 2007, based on the ground cited in the NOID. The director certified his

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<sup>1</sup> On April 17, 2007, Citizenship and Immigration Services (CIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

decision to the AAO for review and notified the petitioner, through counsel, that he could submit a brief to the AAO within 30 days of service of the director's decision.

On August 24, 2007, the petitioner submitted a copy of the final judgment for the dissolution of his marriage, his 2004, 2005, and 2006 federal and state income tax returns, and photocopies of three photographs of the petitioner and his former spouse. The petitioner provides no explanation for his failure to submit this additional documentation when previously requested by the director. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal or certification. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). Regardless, the evidence submitted on certification does not provide any further information relevant to the petitioner's claim of abuse.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has submitted no further evidence regarding the alleged abuse since the issuance of that decision. Accordingly, the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage. Consequently, the petitioner is 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. Here, that burden has not been met. Accordingly, the March 29, 2007 decision of the director is affirmed and the petition is denied.

**ORDER:** The director's decision of March 29, 2007 is affirmed. The petition is denied.