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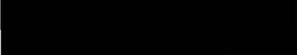
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **JUL 11 2008**

EAC 04 184 51541

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:

SELF-REPRESENTED

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 March 9, 2007 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii) 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), further states:

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. The director initially denied the petition on July 29, 2005, finding that the petitioner failed to establish that she resided with her spouse, that she was battered or subjected to extreme cruelty by her spouse, and that she entered into her marriage in good faith. On appeal, the AAO concurred with the determination of the director but remanded the case on May 19, 2006 because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) in compliance with 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 June 19, 2006, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to establish her claim of residence, abuse and good faith marriage. The petitioner timely responded to the director's NOID by submitting a personal statement and a letter from the reverend of her church. On March 9, 2007, after considering the evidence submitted in response to the NOID, the director found that the petitioner failed to establish her claim of residence, abuse and good faith marriage. The director's discussion will not be repeated here. The director certified his decision to the AAO for review and notified the petitioner that she could submit a brief to the AAO within 30 days of service of the director's decision. No further submission has been received. As such, the record is considered to be complete as it now stands.

The relevant evidence submitted below was fully addressed in our prior decision, which is incorporated here by reference. Accordingly, we will only address the material submitted since that decision was issued.

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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.

*Residence*

The statement from the petitioner and the letter from [REDACTED], submitted in response to the director's NOID, provide no probative information related to the petitioner's claim of residence with her spouse. Accordingly, we concur with the director's finding that the petitioner failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Battery or Extreme Cruelty*

In her statement, the petitioner claims that "[a]fter enduring months of sexual and mental abuse [she] went to [her] church and tried to find solace there." She further states that she "was afraid to tell them what was going on but . . . did tell them that [she] has lots of problems in [her] marriage." The petitioner, however, **provides no details** regarding any specific act of alleged sexual, physical or mental abuse. Similarly, [REDACTED] offers no specific information regarding the petitioner's "huge marital problem" that he referred to in his letter. The general statements of the petitioner and [REDACTED] are not sufficient to establish that the petitioner was battered or subjected to extreme cruelty by her spouse during her marriage. Accordingly, we concur with the finding of the director that the petitioner has failed to demonstrate that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Good Faith Marriage*

Neither the petitioner's statement nor the letter from [REDACTED] provides any probative testimonial evidence regarding the petitioner's claim of a good faith marriage. Accordingly, we concur with the director's finding that the petitioner failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

In sum, the petitioner has failed to establish that she resided with her spouse, that she was battered or subjected to extreme cruelty by her spouse during her marriage, and that she entered into her marriage in good faith. Accordingly, she is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 petition is denied. The March 9, 2007 decision of the director is affirmed.