



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
EAC 04 255 53110

Office: VERMONT SERVICE CENTER

Date: **MAR 25 2008**

IN RE: Petitioner:

[Redacted]

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

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.

Naura 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 The decision of the director will be withdrawn. Because the petition is not approvable, it will again be remanded for further action.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(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 August 5, 2005 for failure to establish the requisite good moral character. In its May 23, 2006 decision on appeal, the AAO concurred with the director's determinations 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 February 8, 2007, which informed the petitioner, through counsel, that he had failed to establish that he was a person of good moral character. Neither the petitioner nor counsel responded to the NOID. The director denied the petition on May 7, 2007 on the ground cited in the NOID. In his Notice of Certification the director informed the petitioner that he 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 the petitioner or counsel.

The petition must be remanded because the director's May 7, 2007 decision was not issued to the proper address. When an alien is represented in proceedings before Citizenship and Immigration Services (CIS), CIS must issue all notices to the alien's attorney of record. 8 C.F.R. § 292.5(a). Although the director issued the NOID to the petitioner in care of counsel, the director issued his

certified decision to the petitioner directly at his personal address. Consequently, the petition must again be remanded for issuance of a new decision to the petitioner in care of his attorney of record.

The petitioner has submitted no brief or further evidence since our decision on appeal was issued. Based on the present record, the petitioner has not demonstrated that he is a person of good moral character and he is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act. In our prior decision, we determined that the petitioner lacked good moral character pursuant to section 101(f)(3) of the Act because he was convicted of a crime involving moral turpitude. We further note that even if the petitioner's conviction did not fall within section 101(f)(3) of the Act, the present record still does not establish the petitioner's good moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The record shows that the petitioner was convicted of cruelty to animals in violation of section 828.12(2) of the Florida Statutes because he dragged his dog on a chain while speeding in his car. The dragged dog left a trail of blood leading to the petitioner's residence where the police found the dog so severely injured that it had to be euthanized. The petitioner has not established extenuating circumstances that would allow us to overlook his commission of this unlawful act that adversely reflects upon his character. *See* 8 C.F.R. § 204.2(c)(1)(vii). Accordingly, we find, as a matter of discretion, that the petitioner has failed to demonstrate his good moral character for this additional reason.

Nonetheless, the petition must be remanded a second time for proper issuance of a newly dated decision to the petitioner in care of his attorney of record.

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.

ORDER: The director's decision of May 7, 2007 is withdrawn. Because the petition is not approvable, the petition is remanded to the director for further action and issuance of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.