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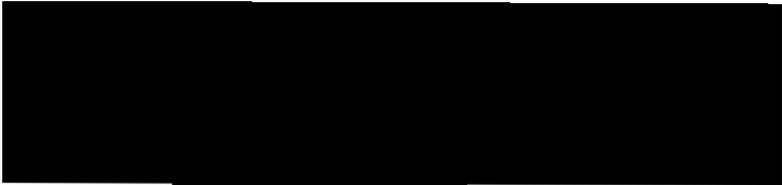
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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FILE:

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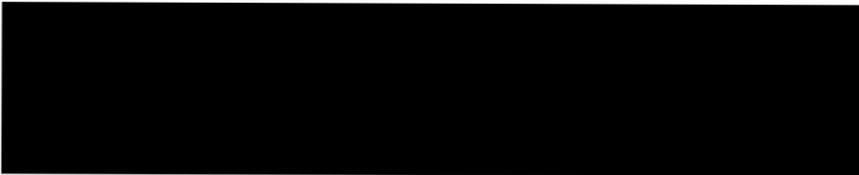
IN RE:

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.

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 The decision of the director will be withdrawn and the petition will be approved.

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 December 27, 2005, for failure to establish the requisite battery or extreme cruelty. In its September 1, 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 November 13, 2006, which informed the petitioner, through counsel, that he had failed to establish the requisite battery or extreme cruelty. The petitioner submitted further evidence in response to the NOID. The director determined the new evidence did not establish the requisite battery or extreme cruelty, denied the petition on June 26, 2007 and certified his decision to the AAO for review.

In our prior decision, incorporated here by reference, we fully discussed the pertinent facts and relevant evidence submitted below. Accordingly, we will only address the evidence submitted after that decision was issued. In response to the NOID, the petitioner submitted copies of documents previously filed and a January 5, 2007 letter from ██████████ LCSW, Administrator of the New York Psychotherapy and Counseling Center. Mr. ██████████ reports that the petitioner was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood and was prescribed medication for insomnia. Mr. ██████████ explains that the petitioner attends therapy sessions at the Center and "has been

working on past traumatic events regarding his conflictual marriage, which ended in divorce.” Mr. Ney provides no further, probative information.

On certification, the petitioner submits copies of two police reports filed by the petitioner against his former wife on September 30, 2002 and April 5, 2003 and a copy of an order of protection issued on October 17, 2002 to the petitioner against his former wife. These documents corroborate the petitioner’s testimony regarding his former wife’s abuse. The September 30, 2002 police report states that the petitioner’s former wife bit him on his upper right arm, consistent with the petitioner’s statement that his wife assaulted and bit him during an argument. The order of protection was issued in criminal court for the petitioner’s protection against his former wife in connection with her charge of third-degree assault. The October 17, 2002 order corresponds to the letter submitted below, addressed to the petitioner’s former wife from the New York City Criminal Justice Agency and summoning her to appear in criminal court on October 17, 2002. The docket number listed on this letter matches the docket number listed on the petitioner’s order of protection. Both the protection order and the September 30, 2002 police report also correspond to the October 3, 2002 letter, submitted below, that is addressed to the petitioner from the New York City Police Department, references the September 30, 2002 incident and advises the petitioner of resources available to victims of domestic violence. The April 5, 2003 police report further supports the petitioner’s claim and states that the petitioner found his clothes damaged by his former wife and that he was afraid of her irrational behavior harming him and his son.

The evidence submitted on certification corroborates the petitioner’s statements and is consistent with the other, relevant evidence submitted below. Accordingly, the petitioner has overcome the ground for denial and has demonstrated 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 has thus established his eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

We note that the record contains evidence that on September 2, 1996, the petitioner was charged with second degree assault and criminal possession of a weapon in the fourth degree in violation of sections 120.05 and 265.01 of the New York Penal Law. However, the record indicates that the charges were dismissed on November 27, 1996. Although the petitioner states that he was arrested in 1995, this discrepancy regarding his arrest date is not disqualifying. The petitioner has submitted evidence in compliance with the regulation at 8 C.F.R. § 204.2(c)(2)(v), which is sufficient to establish his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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 sustained that burden.

**ORDER:** The director’s decision of June 26, 2007 is withdrawn. The petition is approved.