



U.S. Citizenship  
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Services

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FILE:

[REDACTED]  
EAC 05 123 53479

Office: VERMONT SERVICE CENTER

Date: **MAY 14 2008**

IN RE:

Petitioner: [REDACTED]

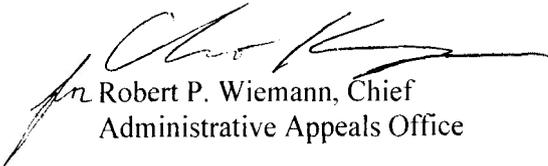
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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 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 December 5, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage and that he entered into his marriage in good faith. In our August 9, 2006 decision on appeal, we concurred with the director's determinations and further found that the petitioner failed to establish that he resided with his spouse. 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). Upon remand, the director issued a NOID on August 25, 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, good faith marriage, and residence. The petitioner failed to respond to the director's NOID. Accordingly, the director denied the petition on February 7, 2007, based on the grounds cited in the NOID. The director certified his decision to the AAO for review and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. The director's certification decision was returned to Citizenship and Immigration Services (CIS) by the United States Postal Service (USPS) on February 13, 2007, with notification of the petitioner's updated address. It is noted that the record contains no documentation from the petitioner regarding a change of his address.

It is further noted that the director's NOID was not returned as undeliverable or with an updated address from the USPS.<sup>1</sup> The record is considered to be complete as it now stands.

Upon review, we concur with the director's determinations. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner submitted no further brief or evidence 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, that he entered into his marriage in good faith, and that he resided with his spouse. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the reasons stated above, 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 February 7, 2007 decision of the director is affirmed and the petition is denied.

**ORDER:** The director's decision of February 7, 2007 is affirmed. The petition is denied.

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<sup>1</sup> Although the director's certified decision was returned to CIS, we note that both the NOID and certified decision were sent to the petitioner's address of record. See 8 C.F.R. § 103.5a(a)(1) (Service of notices and decisions consists of mailing copies to a person's last known address). The director's reliance on the petitioner's unrevoked address of record furnished by the petitioner when mailing the NOID and final decision was proper. See *e.g.*, *Tobeth-Tangang v. Gonzales*, 440 F.3d 537, 540 (1<sup>st</sup> Cir. 2006); *Radkov v. Ashcroft*, 375 F.3d 96, 99 (1<sup>st</sup> Cir. 2004).