



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: **MAY 16 2008**

EAC 04 114 53979

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:

[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.

Robert P. Wiemann
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 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 July 20, 2005 for failure to establish the requisite battery or extreme cruelty and good-faith entry into the marriage and because section 204(c) of the Act, 8 U.S.C. § 1154(c), barred approval of the petition. In its May 19, 2006 decision on appeal, the AAO concurred with the director's determinations and further found that the petitioner had failed to establish that he resided with his first wife.¹ The AAO nonetheless 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) (2006). Upon remand, the director issued a NOID on July 20, 2006, in accordance with the AAO's May 19, 2006 decision. Neither the petitioner nor counsel responded to the NOID and the director denied the petition on February 7, 2007. In his Notice of Certification, the director informed the petitioner, through counsel, 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 relevant evidence submitted below was discussed in our prior decision, incorporated here by reference. Citizenship and Immigration Services (CIS) has received no further evidence or brief from

¹ The record now contains evidence that the petitioner divorced his first wife on October 25, 2006, after our prior decision was issued. The petitioner married his second wife on May 10, 2007.

counsel or the petitioner since that decision was issued. Accordingly, we affirm the director's February 7, 2007 decision that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii) of the Act.

Beyond the director's decision, we find that the petitioner has also failed to establish that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II) of the Act, that he entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii) and because section 204(c) of the Act bars approval of the petition. We note that the petitioner had been notified on several occasions of the deficiencies in the record related to each of these issues.

The AAO maintains plenary power to review each case on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The denial of the petition will be affirmed for the reasons stated above, with each considered 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. The petitioner has not sustained that burden.

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