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U.S. Citizenship
and Immigration
Services

B4

[Redacted]

FILE: [Redacted]
EAC 04 255 53110

Office: VERMONT SERVICE CENTER

Date: **FEB 24 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting 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. Upon certification, the AAO again remanded the petition 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.

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, 8 U.S.C. § 1154(a)(1)(J), 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 former regulation at 8 C.F.R. § 204.2(c)(3)(ii) (2006). 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. The AAO received nothing further from the petitioner or counsel in response to the May 7, 2007 certified decision. On March 25, 2008, the AAO concurred with the director, but remanded the petition because the May 7, 2007 decision was not issued to counsel. Upon remand, the director reissued his decision to counsel on May 15, 2008 and certified his decision to the AAO for review. The director notified counsel that she had 30 days to submit a brief to the AAO. To date, the AAO has received nothing further from the petitioner or counsel.

We affirm the director's determination that the petitioner did not establish that he was a person of good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act. As discussed in our prior decisions dated May 23, 2006 and March 25, 2008 and incorporated here by reference, the petitioner lacks good moral character pursuant to section 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3), because he was convicted of a crime involving moral turpitude. In addition, even if the petitioner's conviction did not fall within section 101(f)(3) of the Act, the record still does not establish the petitioner's good moral character pursuant to the first sentence of the last paragraph of section 101(f) of the Act¹ and the regulation at 8 C.F.R. § 204.2(c)(1)(vii) because the petitioner committed an unlawful act that adversely reflects upon his character. 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.

The denial of the petition will be affirmed 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. The petitioner has not sustained that burden.

ORDER: The director's decision of May 15, 2008 is affirmed. The petition is denied.

¹ Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part: "The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character."