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U.S. Citizenship  
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Services

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FILE:

EAC 04 020 52565

Office: VERMONT SERVICE CENTER

Date:

JAN 0 2008

IN RE:

Petitioner:



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)

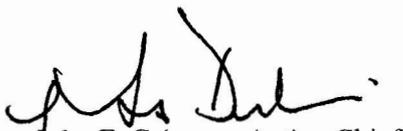
ON BEHALF OF PETITIONER:



**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, 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. 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)(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 that an alien who is the spouse of a lawful permanent resident may self-petition for 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 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)(B)(ii)(II) of the Act, 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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. In this case, the director initially denied the petition on August 15, 2005, finding that the petitioner failed to respond to the director's Request for Evidence (RFE) and, therefore, that the petitioner failed to establish her eligibility for immigrant classification. The director also found that the petitioner had become statutorily ineligible for the benefit sought, as her marriage to [REDACTED] was legally terminated on June 11, 2004, and she remarried [REDACTED] on July 2, 2004, prior to the adjudication of the self-petition based on her marriage to [REDACTED]. In the AAO's June 1, 2006 decision on appeal, the AAO considered the additional evidence that was submitted in response to the RFE, as the director incorrectly determined that the petitioner had failed to respond to the RFE. The AAO ultimately concurred with the director's determination that the petitioner is statutorily ineligible for immigrant classification sought, as section 204(a)(1)(B)(ii) of the Act does not provide that remarriage before the self-petition is filed or approved, is permitted. However, the AAO 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).<sup>1</sup> Upon remand, the director issued a

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<sup>1</sup> On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related

NOID on August 17, 2006, which informed the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish the requisite qualifying relationship, eligibility for immigrant classification based on the qualifying relationship, joint residence, battery or extreme cruelty, good moral character, and good-faith entry into the marriage. The petitioner failed to respond to the NOID and the director denied the petition on March 9, 2007, finding that, based on her remarriage to [REDACTED], the petitioner was statutorily ineligible for immigration benefits. The director also found that the petitioner failed to establish that she had the requisite qualifying relationship, eligibility for immigrant classification based on the qualifying relationship, joint residence, battery or extreme cruelty, good moral character, and good-faith entry into the marriage. The director certified his decision to the AAO for review and notified the petitioner that she could submit a brief to the AAO within 30 days of service of the director's decision. To date, no further submission has been received. Accordingly, the record is considered to be complete as it now stands.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has submitted no further evidence since the issuance of that decision. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act and her 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 March 9, 2007 decision of the director is affirmed and the petition is denied.

**ORDER:** The director's decision of March 9, 2007 is affirmed. The petition is denied.