

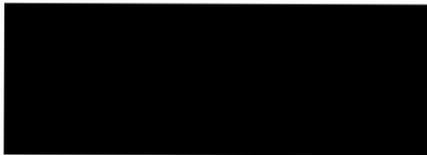
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 04 243 53317

Office: VERMONT SERVICE CENTER

Date: JUN 5 2009

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)

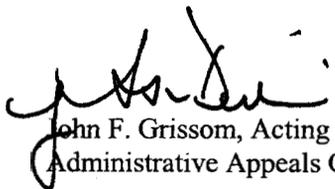
ON BEHALF OF PETITIONER:

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.

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)(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, 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 June 28, 2005, finding that the petitioner failed to: (1) submit evidence that he had married his spouse in good faith; and (2) establish that he had been subjected to battery or extreme cruelty. In the AAO's March 10, 2006 decision on appeal, the AAO concurred with the director's determination; 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 NOID on April 24, 2007, which informed the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish the requisite good faith entry into marriage and abuse. The petitioner failed to respond to the NOID and the director denied the petition on September 7, 2007, finding that the petitioner failed to establish that he had married his spouse in good faith, and was subjected to battery or extreme cruelty. The director certified his decision to the AAO for review and notified the petitioner that he

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<sup>1</sup> On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

could submit a brief to the AAO within 30 days of service of the director's decision. The director mailed his decision to the petitioner's last known address and that decision was returned by the U.S. Postal Service as "Not deliverable as addressed – unable to forward."<sup>2</sup> 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 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)(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 September 7, 2007 decision of the director is affirmed and the petition is denied.

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

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<sup>2</sup> Pursuant to 8 C.F.R. § 265.1, a petitioner is required to report any new address to U.S. Citizenship and Immigration Services (USCIS) within 10 days of changing an address. According to the record, the petitioner reported a new address to USCIS on July 16, 2008. Assuming the petitioner reported his new address within the required 10-day time period, he would have moved no earlier than July 6, 2008, which is a date after the NOID and the director's certified denial decision were issued. As the director issued both decisions to the petitioner's last known address as required by 8 C.F.R. § 103.5a(a), the AAO cannot find that the petitioner's failure to receive either the NOID or the denial decision was the fault of USCIS.