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U.S. Citizenship
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FILE: [Redacted]
EAC 05 117 53000

Office: VERMONT SERVICE CENTER

Date: JAN 23 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. 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.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States 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 a preference immigrant under section 203(a)(2)(A) 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 states, in pertinent part:

In acting on petitions filed under . . . 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 November 22, 2005 because the petitioner did not establish that she had a qualifying relationship with a U.S. lawful permanent resident. In its October 25, 2006 decision on appeal, the AAO determined that the petitioner had not established a qualifying spousal relationship with a U.S. lawful permanent resident because the petitioner's marriage to her former husband was terminated more than four years before her Form I-360 was filed. The AAO further determined that the petitioner had failed to establish her eligibility for preference immigrant classification under section 203(a)(2)(A) of the Act as the spouse of a U.S. lawful permanent resident and that her former spouse had subjected her to battery or extreme cruelty. However, the AAO 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 January 3, 2007. The NOID granted the petitioner 60 days to submit a response and any additional evidence. Neither counsel nor the petitioner responded to the NOID. Accordingly, the director denied the petition on November 14, 2007 for failure to establish the requisite qualifying relationship, eligibility for immigrant classification based on such a relationship and battery or extreme cruelty. The director certified his decision to the AAO for review.

The director's Notice of Certification informed the petitioner 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. Accordingly, the November 14, 2007 decision of the director denying the petition is affirmed. The petitioner has not

demonstrated that she had the requisite qualifying relationship, eligibility for preference classification based on such a relationship and battery or extreme cruelty. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

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 November 14, 2007 is affirmed. The petition is denied.