

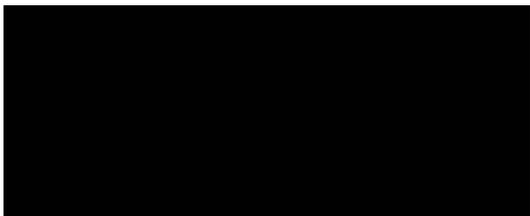
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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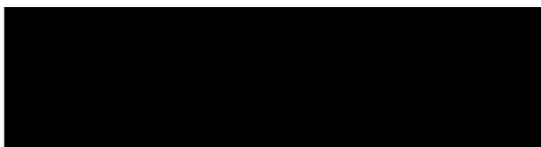
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Office: VERMONT SERVICE CENTER

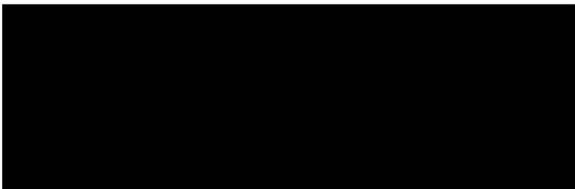
Date: JAN 26 2009

IN RE: Petitioner:



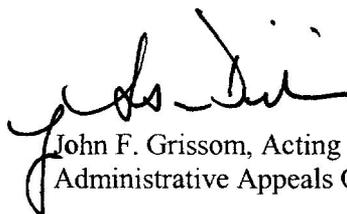
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



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.


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 The decision of the director will be withdrawn and the petition will again be remanded for further action.

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 states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . 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 April 28, 2005 because the petitioner did not establish her good moral character due to her conviction for an aggravated felony. In its March 2, 2007 decision on appeal, the AAO concurred with the director's determination, 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) (2007).

Upon remand, the director issued a NOID on June 8, 2007 which informed the petitioner that she had failed to demonstrate the requisite good moral character. 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 December 5, 2007 on the ground cited in the NOID and certified the decision to the AAO for review.

The case must be remanded again because the Notice of Certification was issued to the wrong address: [REDACTED] rather than [REDACTED] or P.O. Box [REDACTED] counsel's addresses of record. The postal service returned the incorrectly addressed Notice of Certification to USCIS as "attempted – not known, unable to forward."

When an alien is represented in proceedings before United States Citizenship and Immigration Services (USCIS), USCIS must issue all notices to the alien's attorney of record. 8 C.F.R. § 292.5(a). Here, the Notice of Certification was not mailed to the petitioner at her last known address pursuant to the regulation at 8 C.F.R. § 103.5a(a)(1) and we cannot ensure that the petitioner was notified of the

director's decision, as required by 8 C.F.R. § 103.4(a)(2). Accordingly, the case must be remanded to the director for issuance of a newly dated Notice of Certification properly addressed to counsel.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The December 5, 2007 notice of certification of the director is withdrawn. Because the petition is not approvable, the matter is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.