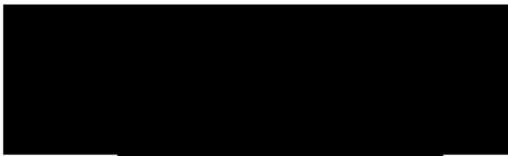




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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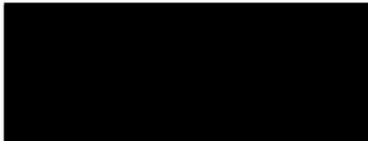
EAC 05 163 52853

Office: VERMONT SERVICE CENTER

Date:

MAR 05 2009

IN RE:



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

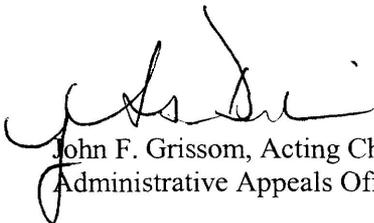
ON BEHALF OF PETITIONER:



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.

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 service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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.

The director denied the petition on the basis of his determination that the petitioner had failed to respond to his request for additional evidence, and that the record did not contain sufficient documentation to establish the petitioner's eligibility. In its December 13, 2006 decision, the AAO agreed with the director's analysis. The AAO analyzed the evidence of record and determined that the petitioner had failed to establish that she had shared a joint residence with her husband; that she was subjected to battery and/or extreme cruelty by her husband; that she is a person of good moral character; and that she had entered into marriage with her husband in good faith. Although the AAO agreed with the director's reasoning, it remanded the petition to the director, on technical grounds, for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).¹

The director issued the requisite NOID on April 17, 2007. However, the petitioner did not respond. Accordingly, the director determined that the petitioner had failed to establish that she had shared a joint residence with her husband; that she was subjected to battery and/or extreme cruelty by her husband; that she is a person of good moral character; and that she had entered into marriage with her husband in good faith. The director, therefore, denied the petition on December 5, 2007 and certified his decision to the AAO for review. The contents of those documents are part of the record and their contents need not be repeated here.

The record contains a supplemental submission from the petitioner. In her undated letter, the petitioner states that "[m]y lawyer didn't send this to you so I am going to send you all the evidence myself." However, the AAO notes that every document submitted by the petitioner, except for a letter from the City of Fresno, California, is already contained in the record of proceeding, and has already been considered by U.S. Citizenship and Immigration Services (USCIS).

As she fails to submit any evidence or argument with regard to joint residence with her husband; battery and/or extreme cruelty; or good faith entry into the marriage that has not already been rejected by USCIS, the petitioner has failed to satisfy any of those criteria. The February 6, 2008 letter from the City of Fresno, California, which has not been previously considered, fails to establish that the petitioner is a person of good moral character. As explained by the AAO in its

¹ 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.

December 13, 2006 decision, the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires the petitioner to submit a local police clearance, or a state-issued criminal background check, for each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition (in this case, the period from May 2002 through May 2005). As such, and as noted by the AAO, the petitioner must submit local police clearances or a state-issued criminal background checks regarding her good moral character from India, New York, and New Jersey. The petitioner has failed to provide such evidence. The letter from the City of Fresno, California fails to cover her residence in India, New York, and New Jersey. As such, the petitioner has failed to establish that she is a person of good moral character.

The petitioner has failed to establish that she shared a joint residence with her husband; that she was subjected to battery and/or extreme cruelty by her husband; that she is a person of good moral character; and that she entered into marriage with her husband in good faith. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and her petition must be denied. The director's decision will be affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's December 5, 2007 decision is affirmed. The petition is denied.