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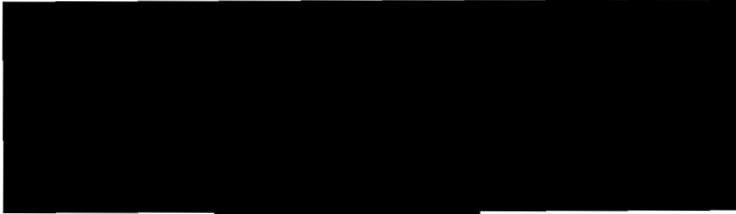
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Room 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 03 187 54419

Office: VERMONT SERVICE CENTER

Date: **MAR 09 2009**

IN RE:



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

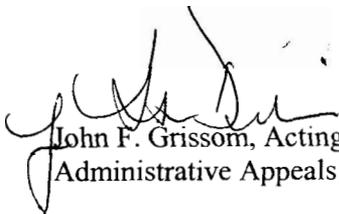
ON BEHALF OF PETITIONER:



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)(B)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(iii), as the battered child of a lawful permanent residence of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that he is a person of good moral character. The AAO agreed with the director's analysis in its October 4, 2006 decision, and also found, beyond the director's decision, that the petitioner had failed to establish that he had resided with the allegedly abusive parent, or that he had been subjected to battery and/or extreme cruelty by the allegedly abusive parent. However, the AAO remanded the petition to the director, on technical grounds, for issuance of a notice of intent to deny (NOID) 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 January 4, 2007. However, the petitioner did not respond. Accordingly, the director determined that the petitioner had failed to establish that he is a person of good moral character; that he resided with the allegedly abusive parent; and that he had been subjected to battery and/or extreme cruelty by the allegedly abusive parent. The director, therefore, denied the petition on June 26, 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. Although counsel submitted a July 12, 2007 indicating that a brief would be sent to the AAO within 60 days, no further submission has been received. Accordingly, the record is considered to be complete as it now stands.

As the petitioner has chosen not to submit additional evidence to the AAO to rebut the findings of the director's notice of certification, he has not established that he is a person of good moral character; that he resided with the allegedly abusive parent; or that he was subjected to battery and/or extreme cruelty by the allegedly abusive parent. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(iii) of the Act, and his 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 June 26, 2007 decision is affirmed. The petition is denied.

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.