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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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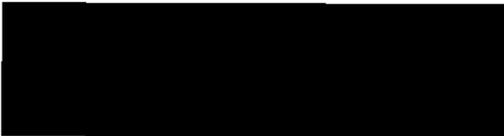
Date: **APR 05 2011** Office: VERMONT SERVICE CENTER

FILE: EAC 07 153 50066

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 remain denied.

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).

Here, the director initially denied the petition on August 26, 2008, because the petitioner did not establish that he was battered or subjected to extreme cruelty by his former spouse. In the May 26, 2009 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) (as in effect at the time the petition was filed). Upon remand, the director issued a NOID on July 21, 2010, which informed the petitioner that he had not submitted sufficient evidence to meet the battery or extreme cruelty requirement. The NOID granted the petitioner 33 days to submit a response and any additional evidence. The petitioner did not respond to the NOID. The director denied the petition on December 16, 2010, and certified the decision to the AAO for review.

The Notice of Certification informed the petitioner that he had 30 days to submit a brief to the AAO. To date, the AAO has received nothing further from the petitioner or counsel. The petitioner has not demonstrated that he was subjected to battery or extreme cruelty by his former U.S. citizen spouse. Beyond the director's decision, the petitioner has not established a qualifying relationship with his alleged abuser because he remarried another woman on March 18, 2010 during the pendency of this petition. 8 C.F.R. § 204.2(c)(1)(ii). The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Accordingly, the December 16, 2010 decision of the director denying the petition will be affirmed as modified herein.

The petition will remain denied for the reasons stated above, with each considered 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 December 16, 2010, is affirmed as modified. The petition remains denied.