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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**



B9

Date: **APR 12 2011** Office: [Redacted] FILE: [Redacted]

IN RE: Petitioner: [Redacted]

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

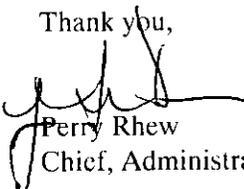
ON BEHALF OF PETITIONER:



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 the \$630 fee. 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 Director, [REDACTED] 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.

The petitioner seeks classification as an immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

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 he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 spouse of an alien lawfully admitted for permanent residence 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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or 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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will repeat certain facts only as necessary here. In this case, the director initially denied the petition on October 5, 2007, finding that the petitioner failed to establish that she had resided with the claimed abuser, that she had been subjected to battery or extreme cruelty by her spouse, and that she had entered into the marriage in good faith. In the AAO's April 1, 2009 decision on appeal, the AAO concurred with the director's determination that the petitioner failed to establish the requisite joint residence, abuse, and good-faith entry into the marriage. The AAO, however, remanded the petition for issuance of a Notice of Intent to Deny (NOID), as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹ Upon remand, the director issued a NOID on February 25, 2010, which informed the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish the requisite joint residence, abuse, and good-faith entry into the marriage. It is noted that although the director mailed the NOID to the petitioner's business address (as reflected on the Form G-28, Notice of Entry of Appearance as

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.

Attorney or Representative, and on the Form G-325, Biographic Information form, which were signed by the petitioner on October 23, 2008 and May 9, 2009, respectively) and not to the petitioner's representative, the petitioner's representative indicated in her February 9, 2011 letter to USCIS that she is no longer interested in pursuing the VAWA petition, "which, as far as [she is] concerned is finished." As such, the NOID need not be re-mailed to the petitioner's representative. The petitioner failed to respond to the NOID and the director denied the petition on December 17, 2010, finding that the petitioner failed to establish the requisite joint residence, abuse, and good-faith entry into the marriage. The director certified his decision to the AAO for review and notified the petitioner that she could submit a brief to the AAO within 30 days of service of the director's decision. To date, no further submission has been received. Accordingly, the record is considered to be complete as it now stands.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has submitted no further evidence since the issuance of that decision. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

The petition will be denied for the reasons stated above, 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. Here, that burden has not been met. Accordingly, the December 17, 2010 decision of the director is affirmed and the petition will remain denied.

ORDER: The director's decision of December 17, 2010 is affirmed. The petition will remain denied.