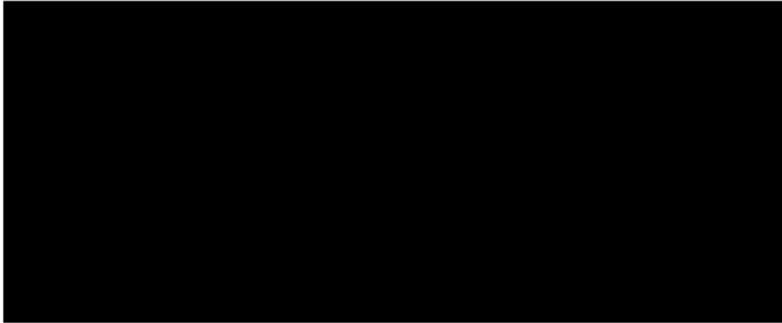




U.S. Citizenship
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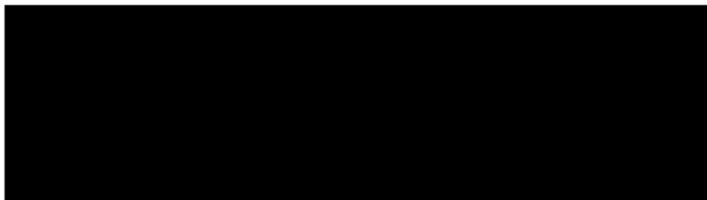
Date **DEC 20 2012** Office: VERMONT SERVICE CENTER

FILE: 

IN RE: 

PETITION: Petition for Immigrant Abused 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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,


Ron Rosenberg
Acting 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)(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 the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, 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). An alien who has divorced an abusive lawful permanent resident may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse." Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

Here, the director initially denied the petition on November 20, 2007, because the petitioner did not establish the requisite qualifying relationship or that she was eligible for immigrant classification based on said relationship, or that she was battered or subjected to extreme cruelty by her spouse. In the April 2, 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). The AAO also found that, beyond the director's decision, the petitioner had failed to establish that she had entered into her marriage in good faith or that she had resided with her spouse. Upon remand, the director issued a NOID on April 22, 2009, which informed the petitioner that she had not submitted sufficient evidence to meet the qualifying relationship, eligibility for immigrant classification, good-faith entry into the marriage, joint residence and battery or extreme cruelty requirements. Counsel responded to the NOID with a letter and additional evidence. The director found that the petitioner had still failed to establish the requisite good-faith entry into the marriage and battery or extreme cruelty and denied the petition on August 20, 2012. The director certified the decision to the AAO for review.

In our prior decision, incorporated here by reference, we fully discussed the pertinent facts and relevant evidence submitted below. Accordingly, we will only address the evidence submitted after that decision was issued. In response to the NOID, counsel submitted a copy of the petitioner's husband's resident card, a copy of their marriage certificate, photographs, a statement by the petitioner, newspaper and magazine articles, tax information, affidavits, account statements, a lease, and medical information.

The director correctly assessed the evidence submitted in response to the NOID. The marriage certificate and photographs from a few unspecified occasions that are not accompanied by any explanation of their significance do not show the petitioner's intent in entering into the marriage. The

petitioner's statement describing where she and the petitioner lived does not describe in probative detail how she met her former husband, their courtship, engagement, wedding, or any of their shared experiences. The bank statements, Western Union receipts and the lease cover the period after the petitioner claims to have last lived with her ex-husband in November 2005, and the lease contains only the petitioner's signature, so they do not show that the petitioner married her husband in good faith. The letters from friends do not provide any information as to the petitioner's intentions in entering the marriage, nor do they describe any of their observations of the couple's interactions.

The evidence also does not provide any additional information to show that the petitioner was subjected to battery or extreme cruelty during her marriage. The friends' affidavits do not describe any particular incidents of abuse, nor does the behavior they describe involve threatened violence, psychological or sexual abuse, or otherwise constitute extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The medical documentation provided does not indicate that the petitioner's condition was related to her former husband or his actions. The newspaper articles, magazine articles, awards and photographs with celebrities do not provide any relevant information regarding the petitioner's intentions in entering the marriage or whether she was subjected to battery or extreme cruelty by her ex-husband.

On certification, counsel submits a brief in which he contends that there is adequate evidence to establish that the petitioner married her former husband in good faith and was subjected by him to battery or extreme cruelty. The brief submitted does not overcome the deficiencies noted in the previous AAO decision, nor does it overcome the director's grounds for denial. As such, the petitioner has not demonstrated her entry into the marriage in good faith or the requisite battery or extreme cruelty. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

Furthermore, as the petitioner has failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such battery or extreme cruelty. Consequently, beyond the director's decision,¹ the petitioner has not demonstrated that she had a qualifying relationship with a lawful permanent resident and was eligible for preference immigrant classification based on such a relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) and (cc) of the Act. Accordingly, the August 20, 2012, decision of the director denying the petition will be affirmed, as modified.

The petition will remain denied for all of the reasons stated above, with each considered an independent and alternative basis for denial. In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

¹ A petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

ORDER: The director's decision of August 20, 2012, is affirmed as modified by the foregoing discussion. The petition remains denied.