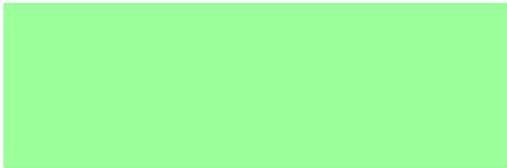


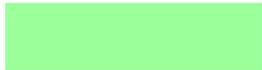


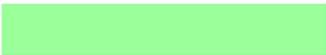
U.S. Citizenship
and Immigration
Services

(b)(6)



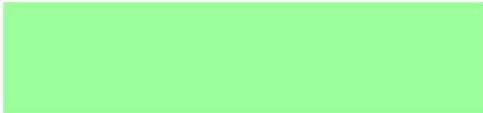
Date: **JUN 05 2013**

Office: VERMONT SERVICE CENTER File: 

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:

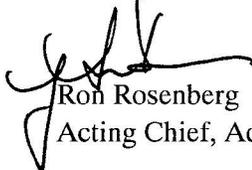


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its 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 motion 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 any motion to 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 Director, Vermont Service Center, 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).

Section 204(a)(1)(J) of the Act states, in pertinent part:

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

In this case, the director initially denied the petition on September 27, 2007 because the record did not establish the petitioner's eligibility. In its March 5, 2009 decision on appeal, the AAO determined that the petitioner had not established a qualifying spousal relationship with a U.S. citizen and her eligibility for immediate relative classification based on such a relationship. However, the AAO 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) (2006).

Upon remand, the director issued a NOID on February 23, 2010 which informed the petitioner that she had not submitted sufficient evidence to establish that she had a qualifying relationship as the spouse of a U.S. citizen and that she is eligible for immediate relative classification based on her relationship with her former spouse. The NOID granted the petitioner 33 days to submit a response and any additional evidence. The petitioner, through counsel, responded with a brief. On January 16, 2013, the director denied the petition on the grounds cited in the NOID and certified the decision to the AAO for review.

The director's Notice of Certification informed the petitioner that she had 30 days to submit a brief to the AAO. To date, the AAO has received nothing further from the petitioner. Upon a review of the record, including counsel's brief submitted in response to the NOID, the record failed to establish that the petitioner had a qualifying spousal relationship with a U.S. citizen and was eligible for immediate relative classification based on that relationship. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and accordingly, the January 16, 2013 decision of the director denying the petition is affirmed.

(b)(6)

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The denial of the petition will be affirmed for the above stated reasons, with each considered as an independent and alternative basis for denial. In these proceedings, the petitioner bears the burden of proof to establish the beneficiary's 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.

ORDER: The director's decision of January 16, 2013 is affirmed. The petition remains denied.