

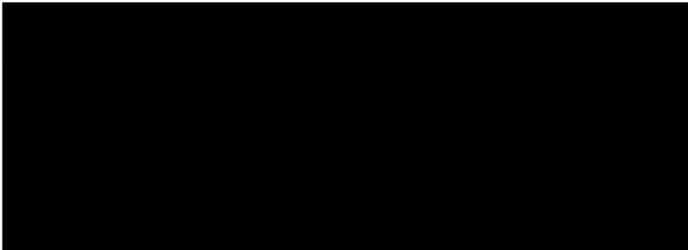
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Hy.

FILE: [Redacted]
EAC 05 137 52752

Office: VERMONT SERVICE CENTER

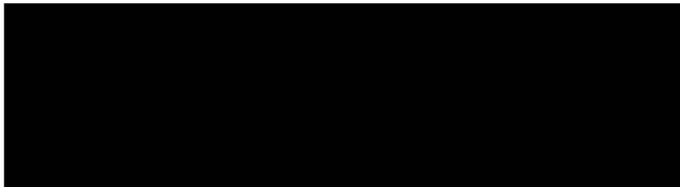
Date: OCT 23 2008

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Director (Director), Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The January 29, 2007 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii) 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, 8 U.S.C. § 1154(a)(1)(J), further states:

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 only repeat certain facts as necessary here. The director initially denied the petition on December 19, 2005, finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage. On appeal, the AAO concurred with the determination of the director. However, the AAO remanded the case on August 9, 2006 because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) in compliance with 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 October 10, 2006, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to establish her claim of abuse. The petitioner responded to the NOID on December 8, 2006. On January 29, 2007, after considering the evidence submitted in response to the NOID, the director found that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage. The director's discussion will not be repeated here. The director certified her decision to the AAO for review and notified the petitioner, through counsel, that she could submit a brief to the AAO within 30 days of service of the director's decision. The petitioner, through counsel, provided additional evidence on certification.

The relevant evidence submitted below was fully addressed in our prior decision, which is incorporated here by reference. Accordingly, we will only address the material submitted since that decision was issued which consists of the evidence submitted in response to the NOID and on certification.

¹ On April 17, 2007, Citizenship and Immigration Services (CIS) 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.

In response to the director's NOID, the petitioner submitted a personal declaration dated December 6, 2006. Although signed by the petitioner as being true and correct, the petitioner's declaration contains the following notation: "This statement is a true and correct translation of my Spanish language statement." The record, however, contains only the translated statement, not the petitioner's original statement. On certification, the petitioner resubmits a copy of the translated version of her December 6, 2006 declaration as well as a "Supplemental Declaration," dated February 15, 2007. The Supplemental Declaration contains the same deficiency as the December 6, 2006 declaration; while it is a translation of the petitioner's alleged statement, it is not accompanied by the petitioner's own original statement. We note that the petitioner's translated Supplemental Declaration indicates that she "made a written statement that discussed details of the abuse [she] suffered . . . [and] the notary public . . . submitted [the petitioner's] statement without translating it." In addition, although the petitioner also indicated that she was "attaching a copy of that statement with an English translation," as previously noted, the record does not contain the petitioner's original statement for either her December 6, 2006 declaration or her Supplemental Declaration. The regulation at 8 C.F.R. § 103.2(b)(3) states that any document containing a foreign language that is submitted to Citizenship and Immigration Services (CIS) must be accompanied by a full English translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. In this instance, although the petitioner has submitted the requisite English language translations, she has failed submit the original foreign language document which demonstrates that she actually made the purported statements. Without such evidence, the two declarations are not probative and will not be accorded any weight in this proceeding.

The remaining evidence consists of the statement from [REDACTED], Staff Psychiatrist at Pine Rest Christian Mental Health Services, that was submitted in response to the director's NOID. In his statement, Dr. [REDACTED] acknowledges that the petitioner is his patient and is being treated for depression and anxiety. Dr. [REDACTED] goes on to state that the petitioner has been struggling with her condition "since 1994 when she got married and apparently was in an abusive relationship . . ." His letter, however, offers no probative information regarding the petitioner's claims and does not elaborate on specific details of the petitioner's "apparently . . . abusive relationship."

Accordingly, we concur with the finding of the director that the petitioner failed to demonstrate that she was battered or subjected to extreme cruelty during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. She is, therefore, ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied. 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 January 29, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The January 29, 2007 decision of the director is affirmed.