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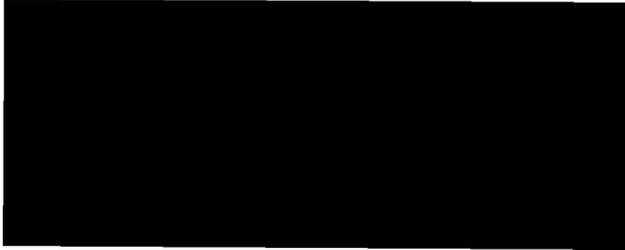
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



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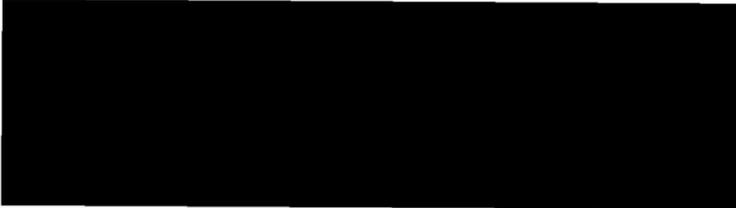


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 21 2006**
EAC 04 211 53246

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The AAO will return the matter for further action by the director.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

On December 12, 2005, the director denied the petition, finding that the petitioner failed to establish that she resided with her husband and that she entered into their marriage in good faith. The director's decision notified the petitioner that she could appeal the decision within 30 days from the date of the decision, or 33 days if the decision was received by mail. *See* 8 C.F.R. § 103.3(a)(2)(i). Counsel filed the appeal on January 25, 2006, which was 45 days after the date of the director's decision. As the appeal was untimely filed, it must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(i).

We note that the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Pursuant to the regulation at 8 C.F.R. § 210.2(g), the director may *sua sponte* reopen any adverse decision and the director may certify any such decision to the AAO pursuant to 8 C.F.R. § 210.2(h). Accordingly, the case will be returned to the director for further action.

ORDER: The appeal is rejected.