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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

By

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FILE:

EAC 05 248 50205

Office: VERMONT SERVICE CENTER

Date: NOV 03 2006

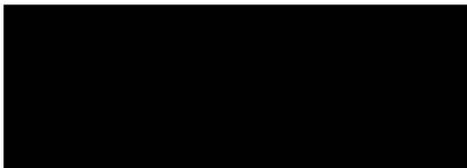
IN RE:

Petitioner:



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 February 9, 2006, the director denied the petition, finding that the petitioner failed to establish that she had a qualifying relationship with a U.S. citizen, was eligible for immediate relative classification based on a qualifying relationship and that she entered into a qualifying relationship 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 April 3, 2006 which was 53 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).

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 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.