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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

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FILE:

EAC 06 017 53519

Office: VERMONT SERVICE CENTER

Date: **SEP 06 2006**

IN RE:

Petitioner:



PETITION: Petition for Special Immigrant Battered 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:

SELF-REPRESENTED

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 "Robert P. 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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

On December 8, 2005, the director denied the petition, finding that the petitioner failed to establish that she had a qualifying relationship with a U.S. lawful permanent resident and was eligible preference immigrant classification based on such a relationship. 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). The petitioner filed the appeal on February 9, 2006, which was 63 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 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.