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U.S. Citizenship
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FILE: [REDACTED]
EAC 05 188 53004

Office: VERMONT SERVICE CENTER

Date: **DEC 27 2007**

IN RE: Petitioner: [REDACTED]

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:

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.

Robert P. Wiemann
Robert P. Wiemann, 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 The decision of the director will be withdrawn and the petition will again be remanded for further action.

The petitioner seeks immigrant classification 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.

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 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 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].

In this case, the director initially denied the petition on November 12, 2005 for failure to establish the requisite battery or extreme cruelty. In its November 6, 2006 decision on appeal, the AAO concurred with the director's determinations but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on February 26, 2007, which informed the petitioner that she had failed to establish the requisite battery or extreme cruelty. The petitioner timely responded to the NOID with additional evidence. The director considered the new evidence, found it insufficient to establish the petitioner's eligibility and denied the petition on October 26, 2007 on the ground cited in the NOID. In his Notice of Certification, the director informed the petitioner that she could submit a brief to the AAO within 30 days after service of the certified decision. To date, nearly 14 months later, the AAO has received nothing further from the petitioner.

The director's Notice of Certification was mailed to [REDACTED], the individual who completed the Form I-360 on the petitioner's behalf, at [REDACTED] in Brooklyn, New York.¹ However, the record shows that the Notice of Certification was returned to Citizenship and Immigration Services

¹ [REDACTED] did not file a Form G-28, Entrance of Appearance as Attorney or Accredited Representative.

(CIS) by the postal service on November 1, 2007 with the notation, "Attempted – Not Known Unable to Forward." The record further shows that the petitioner mailed her NOID response from a different address, [REDACTED], New York. Hence, at the time the Notice of Certification was issued, [REDACTED] was the petitioner's last known address. The Notice of Certification thus was not mailed to the petitioner at her last known address pursuant to the regulation at 8 C.F.R. § 103.5a(a)(1). As the notice was returned to CIS by the postal service, the petitioner has never been notified of the director's most recent decision, as required by 8 C.F.R. § 103.4(a)(2). Accordingly, the case must be remanded to the director for issuance of a newly dated Notice of Certification addressed to the petitioner's last known address.

As always 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.

ORDER: The October 26, 2007 notice of certification of the director is withdrawn. The petition is remanded for further action in accordance with the foregoing and issuance of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.