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U.S. Citizenship
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Services

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MAY 16 2007

FILE:

[REDACTED]
EAC 04 031 52143

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner: [REDACTED]

PETITION: Petition for 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:

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.

Maura Deadrick

Robert P. Wiemann, Chief

Administrative Appeals Office

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 The decision of the director will be withdrawn and the petition will be remanded for further action.

In our September 11, 2006 decision on appeal, we concurred with the director's decision, but remanded the case for issuance of a Notice of Intent to Deny (NOID), as required by 8 C.F.R. § 204.2(c)(3)(ii). On October 23, 2006, the acting director issued a NOID to the petitioner. The petitioner did not respond and on April 4, 2007, the director issued a decision denying the petition, which he certified to the AAO for review.

The case must be remanded again because both the NOID and the April 4, 2007 decision were not sent to the petitioner's last known address. *See* 8 C.F.R. § 103.5a(a)(1). Both the NOID and the April 4, 2007 decision were sent to the addresses of attorneys that no longer represented the petitioner. The NOID was mailed to the petitioner on October 23, 2006 in care of [REDACTED] who previously represented the petitioner. However, Citizenship and Immigration Services (CIS) was notified that Mr. [REDACTED] no longer represented the petitioner as of February 28, 2006, the date that the petitioner's subsequent attorney, [REDACTED] filed a Form G-28, Notice of Entry of Appearance as Attorney. *See* 8 C.F.R. § 292.4(a). Consequently, the NOID was not sent to the petitioner's correct address.

The director's April 4, 2007 decision was sent to the petitioner's subsequent counsel, Mr. [REDACTED]. However, evidence contained in the record indicates that Mr. [REDACTED] had ceased his representation of the petitioner prior to the issuance of the director's decision. Accordingly, the director's April 4, 2007 decision denying the petition was also not sent to the petitioner's correct address.

Because the NOID and the April 4, 2007 decision were not properly served upon the petitioner pursuant to the regulation at 8 C.F.R. § 103.5a(a)(1), the petition will be remanded for issuance of a NOID and any subsequent notice and decision to the petitioner at his last known address, which to date is [REDACTED].

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.