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**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: VERMONT SERVICE CENTER

Date:

JAN 30 2008

[REDACTED]
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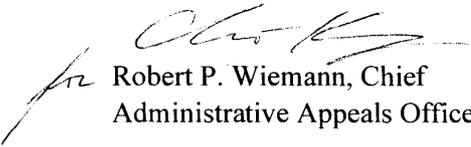
Petitioner: [REDACTED]

PETITION: Petition for 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:

[REDACTED]
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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The AAO will withdraw the director's July 5, 2007 decision; however, because the petition is not approvable, it is remanded for further action and consideration.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , 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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. The director initially denied the petition on June 9, 2005, finding that the petitioner failed to establish that he resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse during their marriage, that he was a person of good moral character, and that he entered into his marriage in good faith. On October 5, 2005, on a subsequent motion to reopen and reconsider, the director upheld the findings made in his initial decision. On appeal, the AAO concurred with the findings of the director but remanded the case because 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). Upon remand, the director issued a NOID to the petitioner's former counsel of record on August 29, 2006. The director reissued the NOID to current counsel on February 13, 2007. However, the director received no response to the NOID, and, therefore, denied the petition and certified the decision to the AAO on July 5, 2007. In his decision, the director notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. To date, the AAO has received nothing further from the petitioner or counsel.¹

¹ It is noted that the certification decision was returned to the Service by the United States Postal Service on July 11, 2007.

Upon review, we find that the director's final certification decision was improperly issued. Specifically, the director's decision was issued to the petitioner, rather than to petitioner's counsel of record. As the final decision was not properly issued to counsel at her address of record in accordance with the regulation at 8 C.F.R. § 292.5, this matter will be remanded. The director must issue a new certification notice to counsel at her address of record. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the AAO for review.