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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 2 5 2005
EAC 04 109 54199

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be summarily dismissed.

The petitioner is a native and citizen of the People's Republic of China who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition, finding that the petitioner had failed to establish that she had been battered or subjected to extreme cruelty by her United States citizen spouse. On appeal, the petitioner stated that the reason for her appeal was as follows:

> We believe the burden of proof in this case is on the respondent to prove that she was abused by the U.S. citizen spouse. However, the statement she provided could be sufficient to sustain that proof with an interview. As we all know, a lot of these kinds of cases are hard to prove simply because the abusing U.S. citizen spouses cannot be located. Furthermore, the abused spouses simply will not come up to contact the law enforcement to report the incident. Without an interview by [CIS], credibility will always be an issue. Therefore, for this case, we appeal. *We are not asking the AAO to grant this case immediately but only to ask [CIS] to grant an interview to give the respondent an opportunity to present her case in person.*

[Emphasis added.]

No further evidence was submitted on appeal.

The petitioner, through counsel, failed to specifically address the ground for denial set forth in the decision of the director and instead requests that the petitioner be interviewed to support her petition. Counsel's request for an interview has no basis in the statute or the regulation related to battered spouses as neither provision provides for such an interview. It is incumbent upon the petitioner to satisfy the statutory and regulatory requirements with documentary evidence.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Inasmuch as the petitioner has failed to specifically identify an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

Beyond the decision of the director, the petitioner failed to establish that she has a qualifying marriage. According to the evidence in the record, the petitioner's spouse was married to [redacted] prior to his marriage to the petitioner. The record reflects that the petitioner and her citizen spouse were married in Los Angeles, California on December 10, 2001 and that the citizen spouse's divorce from [redacted] did not become final until June 13, 2002. As the petitioner's spouse was not free to enter into marriage with the

petitioner, the marriage between the petitioner and s not considered valid, and therefore, cannot be considered a qualifying marriage within the meaning of the Act or regulation.

For this additional reason, the petition may not be approved.

ORDER: The appeal is dismissed.