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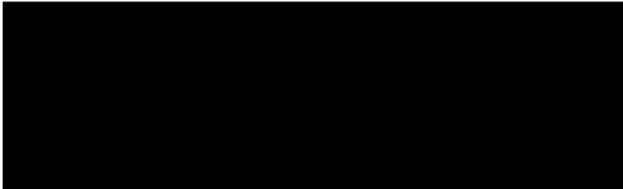
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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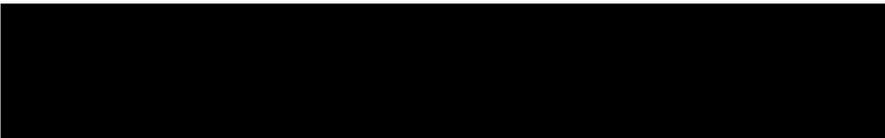


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 03 2007**  
EAC 02 175 50163

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:



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 and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on the petitioner's motion to reopen and reconsider the February 2, 2006 decision of the AAO. The motions will be granted and the case will be remanded to the director for further action.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a U.S. citizen. The director denied the petition because he determined that the petitioner did not demonstrate that she entered into marriage with her husband in good faith. The AAO concurred with the director's determination and dismissed the appeal.

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 or a child of 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 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].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, 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 Service.

\* \* \*

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Russia who was admitted to the United States on October 13, 1999 as a K-1 nonimmigrant on the basis of an approved petition for alien fiancée filed by J-K-<sup>1</sup>, a U.S. citizen. On October 19, 1999, the petitioner married J-K- in California. Their marriage was adjudged dissolved on December 8, 2000. The petitioner filed this Form I-360 on April 24, 2002. The director subsequently issued a Request for Evidence (RFE) of the petitioner's entry into the marriage in good faith. The petitioner, through former counsel, timely responded with additional evidence, however, the director determined that these documents did not establish the petitioner's good faith marriage and consequently denied the petition on July 1, 2003. The petitioner timely appealed. The AAO dismissed the appeal on February 2, 2006.

Present counsel timely filed a "Motion to Reopen/Reconsider" the AAO's decision. In support of the motion to reopen and reconsider, counsel submits additional affidavits from the petitioner and her son, a psychological report regarding the petitioner, a copy of a medication prescription for the petitioner and copies of 11 photographs of the petitioner, her former husband and her children, two of which were previously submitted below. The psychological report and medication prescription are irrelevant. The director determined and the AAO agreed that the petitioner established the requisite battery or extreme cruelty. The copied photographs and new affidavits of the petitioner and her son warrant consideration. The copied photographs contain three pictures of the petitioner and her former husband purportedly taken when they met in Moscow. Counsel states that the declarations of the petitioner and her son filed below "lacked many crucial details that were never elicited from the Petitioner. Petitioner is now represented by a new counsel, and was able to provide many critical details related to her dating period with [her former husband] and the entire period of her marriage." Accordingly, the motion to reopen will be granted and the director shall consider the new affidavits and copied photographs upon remand.

Counsel's motion to reconsider is based on three claims. First, counsel asserts that the AAO violated binding case law of the United States Court of Appeals for the Ninth Circuit<sup>2</sup> regarding good-faith

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<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> In her March 25, 2006 brief (resubmitted on July 10, 2006), counsel erroneously refers to the court

marriage determinations and improperly relied on its own inferences and conjectures. Second, counsel claims that the petitioner met the “‘all credible evidence’ standard.”<sup>3</sup> Third, counsel claims that the AAO and the director violated section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996<sup>4</sup> and section 817 of the Violence Against Women Act (VAWA) of 2005<sup>5</sup> by considering evidence provided by the petitioner’s former husband and brother-in-law.

Although we do not agree with several of counsel’s claims, we find two errors in the director’s decision that were overlooked by the AAO in its February 2, 2006 decision. Accordingly, the motion to reconsider will be granted and the petition will be remanded for further action in accordance with the following discussion.

*Applicable Evidentiary Standard and Burden of Proof*

Counsel claims that the petitioner met the “‘all credible evidence’ standard” and “[a]ny additional request by the Government for additional documentary production violated the ‘any credible evidence’ standard and the regulations governing good faith marriage evidence.” Counsel conflates the applicable evidentiary standard with the petitioner’s burden of proof in these proceedings.

Section 204(a)(1)(J) of the Act requires CIS to “consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of” Citizenship and Immigration Services (CIS). Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i).

The evidentiary guidelines for demonstrating the requisite good-faith entry into a qualifying spousal relationship lists examples of the types of documents that may be submitted and states, “All credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(vii). Counsel claims that because the petitioner submitted some evidence of the types listed in the regulation, she met the “‘all credible evidence’ standard” and that any requirement for further documentation “violated the ‘any credible evidence’ standard.” Counsel is misguided.

In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner’s burden of

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as “the Ninth Federal District Circuit” and the “Ninth Circuit Court.”

<sup>3</sup> On the Form I-290B, counsel also claims that the AAO did not comply with the “‘any available [sic] evidence’ standard.”

<sup>4</sup> Pub. L. 104-208, Div. C, Title III, § 384, 110 Stat. 3009-652 (Sept. 30, 1996).

<sup>5</sup> Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, Title VIII, § 817, 119 Stat. 2962-3060 (Jan. 5, 2006).

proof. While CIS must consider all credible evidence relevant to a petitioner's entry into the marriage in good faith, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To otherwise require would render the adjudicatory process meaningless.

In its February 2, 2006 decision, the AAO listed and addressed all the relevant evidence in the record regarding the petitioner's claim that she entered into marriage with her former husband in good faith. The AAO discussed why the relevant documentary evidence did not fully support the petitioner's statements and the deficiencies of the relevant testimonial evidence. The AAO noted the absence of documentation of some events attested to by certain affiants, but the AAO did not require the petitioner to submit such documentation. The AAO is well aware that "[t]he self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable." 8 C.F.R. § 204.1(f)(1). Accordingly, we find no violation of Section 204(a)(1)(J) of the Act or the regulation at 8 C.F.R. § 204.2(c)(2) in the AAO's February 2, 2006 decision.

#### *Good-Faith Entry into Marriage*

Counsel claims that the AAO violated binding precedent of the United States Court of Appeals for the Ninth Circuit by relying on its own impermissible inferences and conjectures to determine that the petitioner did not enter into marriage with her former husband in good faith. We address each of counsel's contentions as follows.

First, counsel states, "DHS found it implausible that [the petitioner's former husband] would marry [the petitioner] despite her English proficiency only six days after she entered [the] U.S. on a fiancée visa." Counsel does not quote the allegedly improper portion of the AAO decision and we find none. On page three of the February 2, 2006 decision, the AAO states the date and manner of the petitioner's entry into the United States and the date of her marriage to her former husband, but makes no conclusion regarding the time period between the petitioner's entry and her marriage.

Second, counsel states, "DHS also took an issue that [sic] [the petitioner and her former husband] . . . did not have a large or religious wedding ceremony." On page four of the February 2, 2006 decision, the AAO noted that the petitioner did not provide any documentary evidence of, *inter alia*, the "wedding ceremony (if any)." The AAO made no conclusion regarding the size or form of any such ceremony.

Third, counsel asserts, "DHS found it implausible (not unlike [the] Immigration Judge in Damon), that a woman with two children would rush into marriage with a man she hardly knew, and with whom she did not share a common language or cultural background. . . . Court [sic] found all of the above reasons not only insufficient, but IMPERMISSIBLE (emphasis added) bases for an adverse decision."<sup>6</sup>

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<sup>6</sup> The words, "(emphasis added)," and the capitalization of the word, "impermissible," are quoted as

Counsel cites *Damon v. Ashcroft*, 360 F.3d 1084 (9<sup>th</sup> Cir. 2004) in support of her assertion. *Damon* is clearly distinguishable. In that case, the court held that the Immigration Judge's determination that the alien's marriage lacked good faith was not supported by substantial evidence. *Damon*, 360 F.3d at 1088-89. The immigration judge found it implausible that the alien, "a woman with two children, would rush into marriage six days after returning from Korea to the United States with a man she hardly knew, and with whom she did not share a common language or cultural background." *Id.* at 1089. In finding the immigration judge's determination to be impermissibly subjective, the court reiterated that:

the sole inquiry in determining whether a marriage was entered into in good faith is whether the parties intended to establish a life together at the time of marriage. In determining whether such an intent exists, judges must look to objective evidence and refrain from imposing their own norms and subjective standards on the determination.

*Id.* The court cited the following, pertinent facts: the alien met her U.S. citizen spouse during a visit to her sister's home, where her future spouse visited several times a week. *Id.* at 1086. At that time, the alien knew little English and her future husband knew no Korean, the alien's native language, but they communicated with the help of the alien's sister and brother-in-law. *Id.* Two months later, the alien's future husband moved into the home of the alien's sister, where the alien was also residing. *Id.* The alien later returned to Korea, but a few days later, her sister called and told her that the alien's future spouse liked her and missed her and suggested that the alien return to the United States to see him. *Id.* The alien returned to the United States two months later and the couple was married. *Id.*

In contrast, the petitioner in this case states, in her April 15, 2002 affidavit, that her sister introduced the petitioner and her former husband to each other over the telephone and acted as their interpreter. The petitioner states that she and her former husband "began corresponding with each other and talking on the phone" with her sister's help. Approximately three months later, the petitioner's former husband, accompanied by the petitioner's sister, met the petitioner in person in Russia. The petitioner states that the day after her former husband's arrival, he proposed marriage and she accepted. Unlike the couple in *Damon*, the petitioner and her husband never lived in the same household or were otherwise together in a comparable manner before they decided to marry.

Contrary's to counsel's assertion, the AAO did not base its determination on the impermissible assumption that the petitioner could not have entered into the marriage in good faith because she did not share a common language and cultural background with her husband. Rather, the AAO focused its inquiry, in keeping with *Damon*, on the petitioner's intent at the time of the marriage. The AAO summarized the petitioner's testimony regarding how she met her former husband, their courtship and joint residence and noted that the petitioner and her brother-in-law<sup>7</sup> were largely consistent in their

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they appear on page six of counsel's brief.

<sup>7</sup> The AAO only considered the August 12, 2000 letter and the September 26, 2001 affidavit of

descriptions of how the former couple met and courted.<sup>8</sup> However, the AAO also noted that the relevant documentary evidence did not corroborate certain facts and significant events in the former couple's relationship as the petitioner and ██████████ attested, such as the former couple's written correspondence and their meeting in Moscow.

The AAO discussed the relevant documentary evidence and explained that the materials established the former couple's joint residence and limited, public presentation of themselves as a married couple, but did not demonstrate the petitioner's own good faith in entering the marriage. We summarize the deficiencies of the relevant documentary evidence. Only three of the 12 photographs submitted below pictured the petitioner and her former spouse together. The housing lease shows that the petitioner and her children resided with her former husband, but the lease alone does not establish the petitioner's good-faith entry into the marriage. The copy of the boarding pass of the petitioner's former spouse indicates that he flew on an Aeroflot flight to Los Angeles on January 25, 1999, but the pass does not state the origin of the flight and the petitioner submitted no other documentary evidence of the former couple's meeting in Moscow. The dental office forms and the school forms for the petitioner's children show that the petitioner was covered under her former husband's dental insurance policy and that he signed or is listed on three forms as the parent, guardian or stepfather of the petitioner's children. While relevant, these documents are more probative of the intent of the petitioner's former husband rather than the petitioner herself. The copied credit card shows that the petitioner took her former husband's last name, but does not demonstrate that the petitioner shared the credit account with her husband. The disclosure and informed consent form (of an immigration attorney) signed by the petitioner and her former spouse in regards to the petitioner's adjustment of status and employment authorization applications confirms that the petitioner sought those immigration benefits shortly after and based on her marriage to her former husband, but the document does not establish the petitioner's good-faith entry into the relationship.

In review, the AAO determined that the relevant evidence submitted below failed to demonstrate that the petitioner entered into marriage with her former husband in good faith. Although the AAO noted that the petitioner agreed to marry her former husband only one day after meeting him in person and by communicating with him through an interpreter, the AAO did not base its decision on those facts alone. Rather, the AAO found that the relevant testimony and documents failed to provide probative information that was sufficient to establish by a preponderance of the evidence that the petitioner entered into the marriage in good faith, as required by section 204(a)(1)(A)(iii) of the Act. While on point, *Damon* is distinguishable from the instant case and the AAO imposed none of the impermissible subjective standards proscribed by *Damon* in its adjudication of the appeal.<sup>9</sup>

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<sup>8</sup> The AAO also erroneously referenced testimony of the petitioner's sister. The record contains no letters or affidavits of the petitioner's sister. The two references to a letter or affidavit of the petitioner's sister on page three of the AAO's February 2, 2006 decision are hereby withdrawn.

<sup>9</sup> In addition to *Damon*, counsel cites four other decisions of the Ninth Circuit in support of her motion. In *Bark v. I.N.S.*, 511 F.2d 1200 (9<sup>th</sup> Cir. 1975), the court held that a determination of marriage fraud cannot be based solely on a former couple's separation after their marriage. *Bark* is

*Confidentiality Provisions of IIRIRA and VAWA 2005*

Counsel asserts, “DHS acted improperly and contrary to the existing regulations promulgated in section 384 of IIRIRA, in using the abuser’s information in his attempt to interfere or undermine his victim’s case.” Counsel further claims that this petition “is also subject to Section 817 of newly enacted VAWA 2005 Act [sic] that requires Department of Homeland Security to provide protection to VAWA victims and not to factor [sic] any information provided by abusive spouses in the final decision.” The AAO is mindful of the confidentiality provisions of IIRIRA and VAWA 2005 and finds no violation of those provisions in its February 2, 2006 decision.

Section 384 of IIRIRA and its subsequent amendment by VAWA 2005 is codified at 8 U.S.C. § 1367,<sup>10</sup> which states, in pertinent part:

Penalties for disclosure of information

(a) In general

Except as provided in subsection (b) of this section, in no case may the Attorney General, or any other official or employee of the Department of Justice, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)--

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the source of the oft-cited precept: “The concept of establishing a life as marital partners contains no federal dictate about the kind of life that the partners may choose to lead.” *Bark* is not, however, particularly relevant to the instant petition. In adjudicating cases filed under the self-petitioning provisions of section 204(a) of the Act, CIS is mindful of the fact that abusive relationships often involve separation(s) that will impact a self-petitioner’s ability to document his or her marital relationship. The remaining cases cited by counsel all involve adverse credibility determinations in asylum cases involving the impermissible imposition of an immigration judge’s subjective beliefs unsupported by evidence of record. None of the determinations in those cases are comparable to those made in the adjudication of the instant petition: *Smolniakova v. Gonzales*, 442 F.3d 1037 (9<sup>th</sup> Cir. 2005) (immigration judge relied on contradictions with no factual basis in the record); *Paramasamy v. Ashcroft*, 295 F.3d 1047 (9<sup>th</sup> Cir. 2002) (immigration judge speculated on the alien’s “real” motives for leaving her native country); *Bandari v. I.N.S.*, 227 F.3d 1160 (9<sup>th</sup> Cir. 2000) (alien found incredible, in part, based on immigration judge’s unsupported assumption that Germany would not have allowed alien to attend college after entering the country on a visitor’s visa).

<sup>10</sup> Section 384(a) of IIRIRA and its subsequent amendments were not enacted as part of the Act. Contrary to counsel’s reference to “existing regulations,” no regulations have yet been promulgated pursuant to 8 U.S.C. § 1367.

(1) make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act using information furnished solely by--

(A) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty,

(B) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty,

(C) a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty),

(D) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty,

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unless the alien has been convicted of a crime or crimes listed in section 241(a)(2) of the Immigration and Nationality Act [.]

\* \* \*

(d) Guidance

The Attorney General and the Secretary of Homeland Security shall provide guidance to officers and employees of the Department of Justice or the Department of Homeland Security who have access to information covered by this section regarding the provisions of this section, including the provisions to protect victims of domestic violence from harm that could result from the inappropriate disclosure of covered information.

8 U.S.C. § 1367 (2007).

The provisions of subsection (a)(1) apply only to “determinations of admissibility or deportability.” The petitioner in this case seeks immigration classification under section 204(a)(1)(A)(iii) of the Act, which involves no determination of admissibility or deportability. Nonetheless, CIS is mindful of the confidentiality provisions of 8 U.S.C. § 1367 and is aware that an adverse decision on a self-petition under section 204(a)(1)(A)(iii) of the Act could negatively influence related decisions on other immigration applications or petitions that do require determinations of the self-petitioner’s admissibility or deportability (or that of the self-petitioner’s derivative beneficiaries). CIS is also bound by any agency or departmental guidance issued pursuant to 8 U.S.C. § 1367(d).

The petitioner's administrative file does not indicate that any information provided solely by the petitioner's former husband was used to make the adverse determination on her Form I-360. However, we note that in his July 1, 2003 decision, the director stated:

Your sister's spouse has made various statements regarding you and your marriage. While his most recent statements attest to a bona fide marriage, because he has previously offered the Service a different story, his affidavits cannot be given much evidentiary weight.

The director is referring to two letters in the petitioner's administrative file that were written by the petitioner's brother-in-law, [REDACTED], are dated February 22 and March 12, 2000 and were submitted to the former Immigration and Naturalization Service (INS) by [REDACTED] himself. [REDACTED] does not fall within any of the prohibited sources of information enumerated in 8 U.S.C. § 1367(a)(1). At the time the letters were written, [REDACTED] was the husband of the petitioner's former husband's sister-in-law. In as much as [REDACTED] may have been a member of the petitioner's former husband's family, the record contains no evidence that [REDACTED] ever resided in the same household with the petitioner, battered or subjected the petitioner or either of her children to extreme cruelty and that the petitioner's former husband consented to or acquiesced in such battery or cruelty. Accordingly, the director's consideration of [REDACTED] February 22 and March 12, 2000 letters would not have violated 8 U.S.C. § 1367(a)(1) even if that provision directly applied to the adjudication of this petition.

Nonetheless, in the interests of full compliance with 8 U.S.C. § 1367 and in keeping with current CIS guidelines, we find that the director's consideration of [REDACTED] February 22 and March 12, 2000 letters was inappropriate. Accordingly, the above-quoted portion of the director's July 1, 2003 decision is hereby withdrawn. On remand, the director shall not use [REDACTED]'s February 22 and March 12, 2000 letters in reassessing the petitioner's eligibility unless the director obtains independent, corroborative evidence of the relevant information from an unrelated source.

We note that in its February 2, 2006 decision, the AAO only considered [REDACTED] August 12, 2000 letter and September 26, 2001 affidavit submitted with this petition and did not consider or discuss [REDACTED] February 22 and March 12, 2000 letters. The latter two letters also have not been considered in the adjudication of the present motion to reconsider that decision.

Counsel also cites section 825(c) of VAWA 2005 in support of her statement that "DHS is specifically covered by the newly enacted law protecting victims of domestic violence and abuse." Section 825(c) of VAWA 2005 was codified as section 239(e) of the Act, 8 U.S.C. § 1229(e) (2007), which provides that in cases where an enforcement action leading to a removal proceeding was taken against an alien at certain locations, the Notice to Appear must include certification of compliance with 8 U.S.C. § 1367. Counsel fails to articulate how section 239(e) of the Act applies to CIS's adjudication of this petition.

*Failure to Issue a Notice of Intent to Deny (NOID)*

In its February 2, 2006 decision, the AAO overlooked the fact that the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, upon remand, the director shall issue a NOID if he intends to deny the petition.

In review, the motion to reconsider is granted because in its February 2, 2006 decision the AAO did not: (1) address the director's failure to issue a NOID prior to denying the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii); and (2) overlooked the director's improper consideration of [REDACTED] February 22 and March 12, 2000 letters. The motion to reopen is granted for consideration upon remand of the new affidavits submitted on motion. Accordingly, the petition is remanded to the director for consideration of the new affidavits and issuance of a NOID if the director intends to affirm his prior denial of the petition. The portion of the director's decision citing [REDACTED] earlier statements to the INS is hereby withdrawn and the director is instructed not to consider [REDACTED] February 22 and March 12, 2000 letters in his reevaluation of the petition on remand.

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

**ORDER:** The motion to reopen and the motion to reconsider are granted. The petition is remanded to the director for further action in accordance with this decision. If the director's new decision is adverse to the petitioner, the director shall certify the decision to the Administrative Appeals Office for review.