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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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Services

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FILE: [REDACTED]  
EAC 05 191 50189

Office: VERMONT SERVICE CENTER

Date: DEC 20 2007

IN RE: Petitioner: [REDACTED]

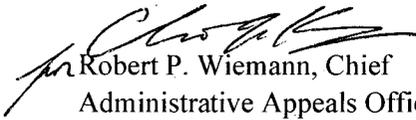
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.

  
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 The January 18, 2007, decision of the director will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

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 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 January 3, 2006, finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse during their marriage and that he entered into his marriage in good faith. On appeal, the AAO concurred with the findings of the director and found, beyond the decision of the director, that the petitioner also failed to establish that he resided with his spouse and is a person of good moral character. However, the AAO 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 on August 29, 2006 and again on September 5, 2006. The director received no response to the NOIDs, denied the petition, and certified the decision to the AAO. In her 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. Upon review, we find that the NOIDs and the director's January 18, 2007 decision were not properly issued and the case must again be remanded to the director for further action.

The director's first NOID was issued in care of American Corporate Society (ACS) to an address in [REDACTED]. The director then reissued the NOID in care of ACS to a second address in [REDACTED]. It appears that the director sent the notices in care of ACS based upon the Form I-360 which was signed by a representative of the ACS who prepared the form in June 2005 and a Form G-28, Notice of Entry of Appearance as Attorney or Representative, dated February 1, 2006 from ACS. The record, however, contains a May 11, 2006 letter from the petitioner which states that he "wish[es] the U.S.C.I.S. to use [REDACTED] for all future correspondence." This is the address to which the AAO issued its remand decision. Notices and decisions, when served by mail, must be sent to a person at his or her last known address. 8 C.F.R. § 103.5a(a)(1). The director did not comply with this

regulatory requirement in this case. In addition, we note that ACS does not appear on the Board of Immigration Appeal's list of recognized organizations. Thus, any recognition of this organization by the Service is improper.<sup>1</sup>

As it does not appear that the petitioner was provided with proper notice of the NOID and ultimately the final decision, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a NOID as well as a new final decision. *See* 8 C.F.R. § 204.2(c)(3)(ii)-(iii). The new decision, if adverse to the petitioner, shall be certified to this office for review.

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 in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

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<sup>1</sup> Under the regulation at 8 C.F.R. § 292.1, persons entitled to represent individuals in matters before the Department of Homeland Security ("DHS"), and the Immigration Courts and Board of Immigration Appeals ("Board"), or the DHS alone, include, among others, accredited representatives. Any such representatives must be designated by a qualified organization, as recognized by the Board. A recognized organization must apply to the Board for accreditation of such a representative or representatives. The rules respecting qualification of organizations, requests for recognition, withdrawal of recognition, and accreditation of representatives, may be found at 8 C.F.R. § 292.2 .