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U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 04 064 53170

Office: VERMONT SERVICE CENTER

Date: DEC 28 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.

  
for 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 The September 7, 2007, decision of the director will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.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 February 22, 2005, finding that the petitioner failed to establish that she entered into her marriage in good faith. On appeal, although the AAO concurred with the findings of the director, 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 May 10, 2007. The petitioner responded to the NOID on May 21, 2007 with a statement and additional evidence. On September 7, 2007, after reviewing the petitioner's response, the director denied the petition, and certified the decision to the AAO. In his decision, the director notified the petitioner that she 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.

Upon review, we find that the director's NOID and final decision were improperly issued. First, while the director's NOID noted the additional deficiency in the record due to the petitioner's remarriage, both the NOID and the final decision fail to address the lack of evidence related to the petitioner's claim of a good faith marriage. Second, and more problematic, the director's September 7, 2007 decision was issued to an incomplete address. Specifically, the decision does not contain the petitioner's apartment number. Due to the incomplete address, the decision was returned to the Service by the United States Postal Service.

As it does not appear that the NOID and final decision covered all grounds of ineligibility and that the final decision was not properly issued to the petitioner at her address of record in accordance with the regulation at 8 C.F.R. § 292.5, 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. 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.