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FILE: [Redacted]
EAC 05 169 52606

Office: VERMONT SERVICE CENTER

Date: **FEB 15 2008**

IN RE: Petitioner: [Redacted]

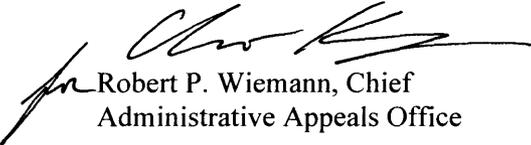
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


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 matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification 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 an alien battered or subjected to extreme cruelty by a United States citizen.

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 clause (ii) or (iii) of subparagraph (B), 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].

In this case, the director initially denied the petition on February 7, 2006, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage. In our October 18, 2006 decision on appeal, we concurred with the director's determination and further found that the petitioner had not established a qualifying relationship as the spouse of a United States citizen because he failed to show a connection between his claim of abuse and the legal termination of his marriage. In addition, because he failed to establish a qualifying relationship, we found that the petitioner failed to establish that he was eligible for immigrant classification based upon a qualifying relationship. However, we remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on January 12, 2007, which informed the petitioner, through counsel, that he had failed to establish his claim of abuse, that he had a qualifying relationship as the spouse of a United States citizen and that he was eligible for immigrant classification based upon that qualifying relationship. The petitioner failed to respond to the director's NOID. Accordingly, the director denied the petition on April 6, 2007, based on the grounds cited in the NOID. The director certified his decision to the AAO for review and notified the petitioner, through counsel, 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. Accordingly, the record is considered to be complete as it now stands.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in the previous decision of the AAO, which is incorporated here by reference. The petitioner has submitted no further brief or evidence since the issuance of that decision. Accordingly, the petitioner has not established that he was battered or subjected to extreme cruelty by his spouse during their marriage, that he had a qualifying relationship as the spouse of a United States citizen, and that he was eligible for immigrant classification based upon that relationship. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the April 6, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The director's decision of April 6, 2007 is affirmed. The petition is denied.