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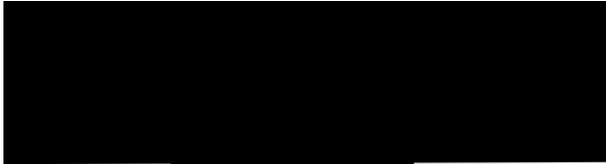
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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B9



FILE:

EAC 06-245-50579

Office: VERMONT SERVICE CENTER

Date:

APR 03 2009

IN RE:

Petitioner:



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:



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.

F. Grissom

(Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The AAO will return the matter for further action by the director.

The petitioner seeks 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 having been battered or subjected to extreme cruelty by his U.S. citizen spouse.

On January 17, 2008, the director denied the petition, finding that the petitioner failed to establish that his wife battered or subjected him to extreme cruelty during their marriage. The director's decision notified the petitioner that he could appeal the decision within 33 days from the date of the decision. *See* 8 C.F.R. § 103.3(a)(2)(i). Counsel filed the appeal on February 20, 2008, which was 34 days after the date of the director's decision. As the appeal was untimely filed, it must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(i).

The director denied the petition without first issuing a Notice of Intent to Deny (NOID) as required under former 8 C.F.R. § 204.2(c)(3)(ii)(2006). While it is no longer a regulatory requirement for petitions filed on or after June 18, 2007, a NOID is required in this case, as it was filed on August 25, 2006.

Pursuant to 8 C.F.R. § 103.5(a)(8), the director may *sua sponte* reopen any adverse decision and the director may certify any such decision to the AAO pursuant to 8 C.F.R. § 103.4(a). Accordingly, the case will be returned to the director for further action.

ORDER: The appeal is rejected.