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

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U.S. Citizenship and Immigration Services

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[redacted]

MAY 19 2009

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 07 169 50356

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.

John 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 having been battered or subjected to extreme cruelty by his U.S. citizen spouse.

The director denied the petition because the petitioner failed to demonstrate that he resided with his wife, entered their marriage in good faith and that his wife battered or subjected him to extreme cruelty.

On appeal, counsel submits copies of documents previously filed and asserts that the evidence submitted below was sufficient to establish the petitioner's eligibility. He states that the petitioner is unable to provide any further evidence and requests that the appeal be sustained "for humanitarian reasons."

The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that an appeal shall be summarily dismissed when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Counsel has failed to specifically identify any error of law or fact and has submitted no new evidence on appeal, conditions which warrant summary dismissal of the appeal.

However, the director denied the petition without first issuing a Notice of Intent to Deny (NOID) as required under the former regulation at 8 C.F.R. § 204.2(c)(3)(ii)(2007), which was in effect at the time this petition was filed on May 21, 2007.[1] Accordingly, the petition will be remanded for issuance of a NOID, which will afford the petitioner a final opportunity to overcome the deficiencies of his case.

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. Because the petition is not approvable, it is remanded to the director for further action and issuance 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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[1] The regulation was amended to remove the specific requirement for a NOID on June 18, 2007. 72 Fed. Reg. 19100, 19107 (Apr. 17, 2007). The amended regulation applies to petitions filed on or after that date. *Id.* at 19104.