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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B9

FILE:

Office: VERMONT SERVICE CENTER

Date: **MAR 31 2011**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
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 The director's decision will be withdrawn and the matter remanded to the director for reissuance of the Notice of Intent to Deny (NOID).

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.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will repeat certain facts only as necessary here. In this case, the director initially denied the petition on March 3, 2008, finding that the petitioner failed to establish that he had been battered or subjected to extreme cruelty as set out in the statute and regulations. In the AAO's April 3, 2009 decision on appeal, the AAO concurred with the director's determination that the petitioner failed to establish the requisite abuse. The AAO also found beyond the decision of the director that the petitioner failed to establish the requisite joint residence and good-faith entry into the marriage. The AAO, however, remanded the petition for issuance of a Notice of Intent to Deny (NOID), as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).¹

Upon remand, the director issued a NOID on June 4, 2010, which informed the petitioner, through counsel, of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish the requisite abuse, joint residence, and good-faith entry into the marriage. The director, however, mailed the NOID to counsel's prior address, not to counsel's current address that is reflected on the AAO's April 3, 2009 decision: [REDACTED]. The petitioner failed to respond to the NOID and the director denied the petition on December 16, 2010, finding that the petitioner failed to establish the requisite abuse, joint residence, and good-faith entry into the marriage. The director certified his decision to the AAO for review and notified the petitioner through counsel at counsel's prior address that he could submit a brief to the AAO within 30 days of service of the director's decision. No additional evidence, however, has been submitted as of this date.

As the director did not mail the NOID to counsel's current address, the matter will be remanded to the director to re-mail the NOID to counsel's current address and to enter a new decision on the petitioner's I-360 petition. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

¹ On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

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ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision that, if adverse to the petitioner, is to be certified to the AAO for review.