

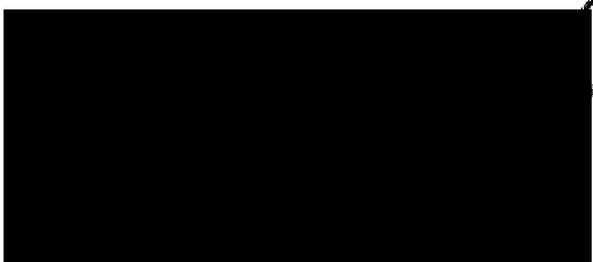
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**



B9

FILE:

[Redacted]
EAC 03 020 51376

Office: VERMONT SERVICE CENTER

Date: **AUG 3 2004**

IN RE:

Petitioner:
Beneficiary:



PETITION: Petition for Special 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:



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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Dominican Republic who is seeking 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 the battered spouse of a United States citizen.

The director denied the petition after determining that the petitioner had failed to submit evidence, as had been requested, to establish eligibility for the benefit sought.

On appeal, counsel for the petitioner submits a statement and additional evidence.

The regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child;¹ and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

On the Form I-360, the petitioner indicated that he entered the United States in February 1995. The record reflects that the petitioner married his United States citizen spouse [REDACTED] on November 30, 1998 in Boston, Massachusetts. The petitioner was placed in removal proceedings on October 10, 2000. On October 19, 2002, the petitioner filed a self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

¹ On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

Because the evidence contained in the record did not establish the petitioner's eligibility for the benefit sought, he was requested on October 25, 2002, June 5, 2003, and September 12, 2003 to submit evidence to establish that he has resided with his spouse, entered into the marriage in good faith and is a person of good moral character. Based on the petitioner's failure to submit police clearances, arrest records or court disposition documents, the director denied the petition.

On appeal, counsel for the petitioner submits a copy of the Massachusetts Criminal History Systems Board's report of the 22 charges and arraignments in the petitioner's or his alias' names. Counsel indicates that she would submit certified court records indicating the final disposition of all charges within 30 days of the filing of the appeal. More than five months have lapsed since the filing of the appeal and nothing more has been submitted for the record.

The director determined that the petitioner had failed to respond to his request for additional evidence; the director denied the petition as a determination as to the petitioner's eligibility could not be made.

On review, the AAO agrees with the decision of the director. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and would not consider the sufficiency of the evidence, had it been submitted on appeal. Consequently, the appeal will be dismissed.

Beyond the decision of the director, the record fails to establish that the petitioner resided with his spouse, entered into the marriage in good faith and that he was battered by or the subject of extreme cruelty by his citizen spouse. For these additional reasons, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.