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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 2 9 2004

IN RE: Petitioner: [redacted]
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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 Mexico 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, finding that: 1) the petitioner had failed to establish that she had been battered or subjected to extreme cruelty by her United States citizen husband; and 2) the petitioner had failed to establish that she was a person of good moral character. On appeal, counsel has submitted a brief and numerous exhibits, many of which are items submitted for the first time on appeal.

The record of proceedings indicates that the petitioner initially entered the United States without inspection on or about April 1996. The petitioner married her U.S. citizen spouse on December 31, 1997. On January 14, 1998, the U.S. citizen spouse filed an I-130 (Petition for Alien Relative) on behalf of the petitioner. The petition was approved by the California Service Center on July 17, 1998. The petitioner subsequently filed Form I-485 (Application for Adjustment of Status) on December 15, 1998. However, after the petitioner failed to appear for a scheduled interview, the application was deemed abandoned and action was terminated on March 5, 2002. The petitioner subsequently filed the Form I-360 and self-petitioned as a Special Immigrant battered spouse on July 2, 2002.

The petitioner's Form I-360 was accompanied by a letter from counsel describing the basis of the petitioner's claim and referencing the petitioner's medical reports regarding her alleged infertility. The Service Center requested additional evidence on or about January 15, 2003, through a Notice of Action, Request for Evidence (RFE). Specifically, the Service Center requested that the petitioner provide evidence demonstrating that she had resided with her spouse, and evidence that she had been the subject of battery or extreme mental cruelty committed by her U.S. citizen spouse. In addition, she was asked to provide evidence establishing her good moral character, specifically noting that she could submit her own affidavit supported by police clearances or records from each place at which she resided for at least six months during the three-year period preceding the filing of the petition. Additionally, the petitioner was advised that if police clearances were not available for some or all locations, she should submit an explanation and could submit alternative forms of evidence such as affidavits by responsible persons who could attest to her good moral character. (See RFE dated January 15, 2003.) Counsel's request for an additional sixty-day period to provide the requested evidence was granted; on July 2, 2002, counsel submitted additional evidence.

The evidence included rent receipts, the petitioner's medical records, and declarations from the petitioner's relatives and acquaintances attesting to her marital problems. After considering the evidence submitted, the director denied the decision on October 6, 2003, finding that the petitioner had not established that that she had been battered or subjected to extreme cruelty perpetrated by the citizen spouse, nor had she established that she was a person of good moral character. Counsel filed an appeal on November 7, 2003. The Notice of Appeal stated that there was sufficient evidence of the petitioner's status as a battered spouse, and that she had presented "all evidence in her possession to support her claim of good moral character." Counsel

requested additional time to submit a brief and/or additional evidence; such additional information was received on May 4, 2004.

For the following reasons, the AAO finds the evidence submitted to be insufficient.

Good Moral Character

The petitioner may not submit the required evidence on appeal to establish that she is a person of good moral character. The RFE was very specific as to the evidence to be submitted on the issue of good moral character, yet no evidence was submitted. Counsel was put on notice of the required evidence and was given a reasonable opportunity to provide it for the record before the petition was adjudicated. Counsel failed to submit the requested evidence, even after requesting and receiving an extension of time to submit additional evidence. Counsel now attempts to submit evidence in the form of affidavits attesting to the petitioner's good moral character on appeal. However, the AAO will not consider this evidence for any purpose. 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)(14). 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).[1] If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. The appeal will be adjudicated based on the record of proceeding before the director. The record before the director was devoid of evidence on the issue of good moral character.

Evidence of Battery or Extreme Mental Cruelty

The director found unconvincing the evidence of the petitioner's claim of mental cruelty based upon the U.S. citizen spouse abandoning the petitioner upon learning of her infertility.[2] The director concluded that the evidence in the form of affidavits from relatives and acquaintances failed to establish that the spouse's behavior qualified as an act of extreme mental cruelty. The regulations define battery or extreme cruelty as:

> being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of

[1] Even the evidence submitted on appeal falls short of what was required to be submitted. There are no police clearances, and no affidavit from the petitioner explaining their absence or otherwise addressing the issue.

[2] While not critical to this decision, the AAO will comment upon counsel's assertion that the U.S. citizen spouse's behavior toward the petitioner and eventual abandonment was due to her diagnosed infertility. (Counsel's Brief at pp. 1-2). The evidence does not clearly support this contention or alleged sequence of events. The vast majority of the records relate to the 2002-2003 time period during which the petitioner asserts that her husband had already left the home. The one record which appears to relate to 2001, at about the time of the petitioner's departure, appears to be a laboratory test which is not accompanied by any medical diagnosis supporting the petitioner's contention of her infertility—the alleged reason for her husband's departure.

> themselves, may not initially appear violent but that are part of an overall pattern of violence.

See 8 C.F.R. § 204.2(c)(1)(iv).

The evidence submitted by counsel consists of three affidavits which essentially state that the petitioner had related that she was having difficulty in her marriage as a result of her infertility. The affidavits further state that the petitioner was saddened by her husband's departure and waited for him to return. (See Exhibit 5; Appeal Exhibit 2). Finally, the petitioner's own affidavit, submitted for the first time on appeal, and the affidavit from her landlord, indicate that U.S. citizen had "tried to hit her once." (See Exhibit 5; Appeal Exhibit 2).

We find that the U.S. citizen spouse's treatment of the petitioner does not rise to the level of extreme cruelty. Although counsel argues that the petitioner has suffered emotional abuse based on the U.S. citizen spouse's effort to assert power and control over the petitioner, such behavior does not rise to extreme cruelty under the statute. As the director's decision noted, extreme cruelty is not established by the mental anguish generally associated with marital difficulties or abandonment. (Director's Decision at p. 2).

As the petitioner has failed to prove that she is a person of good moral character and that she was the victim of battery or extreme mental cruelty, the petition may not be approved.

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.