

B9



U.S. Citizenship
and Immigration
Services



FILE: [REDACTED]
EAC 02 248 53832

Office: VERMONT SERVICE CENTER

Date: OCT 27 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent disclosure of warranted
information 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 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 the petitioner failed to establish that she is a person of good moral character.

On appeal, the petitioner submits a brief and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that-

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

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

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;

* * *

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

The record reflects that the petitioner wed [REDACTED] on January 15, 1993 in Los Angeles, California. The petitioner's spouse filed a Form I-130 petition on her behalf on January 31, 1997, which was approved, but he subsequently withdrew the petition on August 10, 2001. The record indicates that the petitioner and her spouse separated in December 1998 and divorced in January 2002.¹ On July 22, 2002, the petitioner filed a Form I-360, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(i) requires the petitioner to show that she is a person of good moral character.

The alien, in any application where good moral character is a necessary element of eligibility, has the burden of establishing good moral character. See *Brownell v. Cohen*, 250 F.2d 770 (D.C. Cir. 1957); *Estrada-Oreja v. Del Guercio*, 252 F.2d 904 (9th Cir. 1958); *Matter of Turcotte*, 12 I&N Dec. 206 (BIA 1967).

Because the record did not contain satisfactory evidence to establish that the petitioner was a person of good moral character, the director requested that the petitioner submit additional evidence. The director listed the types of evidence she should submit to establish that she was a person of good moral character. In response, the petitioner failed to submit any evidence regarding good moral character. On appeal, the petitioner submits a California Superior Court document and claims that she previously submitted information about her good moral character.²

A review of the record of proceeding indicates that the petitioner failed to provide the director with police clearances as requested.

[REDACTED] became a naturalized citizen in 2000.

² On appeal, the petitioner submits a California Superior Court record indicating that the petitioner was arrested on October 3, 1998 in San Fernando county on charges of misdemeanor theft (484(A)PC). On November 3, 1998, the theft charge was dismissed and the petitioner pled guilty to trespassing (602(J)PC). She was sentenced to 12 months probation and to serve ten days of community service. [REDACTED] The evidence on the record indicates that the police took two of the petitioner's children into protective custody as dependents of the court in November 2000. The record indicates that the petitioner was arrested shortly after her son complained that the petitioner had bitten and punched him. The petitioner submitted a letter written by an MFT Intern and MFT from a non-profit organization that states that the petitioner has had individual and family counseling and that her two sons were removed from the petitioner's care for approximately one year. The record further indicates that the petitioner and her citizen spouse have a history of engaging in domestic abuse altercations and periodically expose their children to their confrontations.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. 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). 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).

Where, as here, 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); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). 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. Consequently, 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.