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

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **APR 05 2005**
EAC 03 140 53245

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:
[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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the preference visa petition and the matter 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.

On September 2, 2004, the director denied the petition, in part, finding that the petitioner failed to establish that she is living in the United States, or if living abroad, the citizen spouse is an employee of the United States government or a member of the uniformed services, or was subjected to battery or extreme cruelty in the United States. The director denied the petition, in part, finding that the petitioner failed to establish that she has entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner asserts that Citizenship and Immigration Services (CIS) had failed to consider the evidence and submits additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, 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 . . . 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; [and]

* * *

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

According to the evidence on the record, the petitioner wed U.S. citizen Gerardo Aponte La Santa on June 25, 1994 in Rio Piedras, Puerto Rico. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The petitioner filed a Form I-485 concurrently with the Form I-130 on April 9, 2001. The district director denied the Form I-130 and the Form I-485 due to abandonment. On January 4, 2003, 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, her U.S. citizen spouse during their marriage. On January 27, 2003, the petitioner filed a second self-petition. The director denied the first Form I-360 petition on March 4, 2004. The director denied the second self-petition on September 9, 2004 and it is this decision that the petitioner is appealing.

The director denied the petition, in part, finding that the evidence was insufficient to establish that the petitioner is living in the United States; or if living abroad, the citizen is an employee of the United States government or a member of the uniformed services. This portion of the director's decision shall be withdrawn. As originally enacted in 1994, the law protecting battered spouses provided that a self-petition could not be approved unless the self-petitioner had resided with the abuser in the United States and was residing in the United States at the time of filing. As revised in 2000, the law now provides that the self-petitioner must have resided with the abuser but not necessarily in the United States.¹

Because the petitioner furnished insufficient evidence to establish that she had resided with her citizen spouse, the director requested that she submit additional evidence (RFE) on March 4, 2004.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including the evidence furnished in response to her RFE. The discussion will not be repeated here.

The evidence relating to joint residence is as follows:

- The petitioner's affidavit dated May 20, 2004.
- A lease agreement dated August 10, 1995, indicating that the petitioner rented a one-bedroom apartment in San Juan, Puerto Rico.

It is noted that the lease agreement does not include the petitioner's spouse. She failed to submit joint leases, mortgages or rental agreements. She did not submit insurance policies listing a common address for the petitioner and her spouse. She did not submit utility bills, tax records and financial documents listing a common address for the petitioner and her spouse. She failed to submit affidavits of friends and family who could verify that the

¹ *Violence Against Women Act of 2000*, Pub. L. 106-386, § 1503(b)(1).

petitioner resided with her spouse. In review, the evidence is insufficient to establish that the petitioner resided with her citizen spouse during the marriage.

The director determined that the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H).

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

Good faith marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her husband in good faith. The petitioner provided Citizenship and Immigration Services (CIS) with her own affidavit, and photographs of a wedding celebration. She failed to submit insurance policies in which the petitioner or her spouse is named as the beneficiary. She failed to submit bank statements, tax records and other documents showing she shared accounts with her spouse. She did not submit evidence of joint ownership of property. No children were born of the marriage. She failed to submit affidavits of friends and family who could provide specific information verifying the petitioner's relationship with her spouse. On the Form I-360, the petitioner indicated that she resided with her spouse from June 1994 until October 31, 2002. In the absence of evidence that the parties shared assets or liabilities or resided together during their eight years of marriage, the evidence on the record is insufficient to establish that the petitioner married her citizen spouse in good faith.

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.