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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER  
EAC 03 058 51191

Date: APR 14 2005

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.

A handwritten signature in cursive script that reads "Mai Johnson".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Acting Center 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 42-year old 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 the spouse of a citizen or lawful permanent resident of the United States and is eligible for immigrant classification under section 201(b)(2)(A)(i), or 203(a)(2)(A) of the Act based on that relationship.

On appeal, the petitioner 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 or her 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, both the petitioner and her U.S. citizen spouse, [REDACTED] were previously married. [REDACTED] was previously married to [REDACTED] and their marriage was terminated on November 14, 1984.<sup>1</sup> The petitioner was previously wed to [REDACTED] who died on August 23, 1987. The petitioner wed U.S. citizen [REDACTED] on November 23, 1991 in Lynwood, California. [REDACTED] filed a Form I-130 petition on behalf of the petitioner on July 24, 2002. On December 9, 2002, the petitioner filed a Form I-360 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.

Because the petitioner furnished insufficient evidence to establish that she was married to the U.S. citizen, that her prior marriage had been legally terminated, that she married her spouse in good faith, that she resided with her spouse and that she is a person of good moral character, the director requested additional evidence on September 8, 2003 and on January 8, 2004. The director specifically listed the types of evidence that would establish that she is a person of good moral character, that she had resided with her citizen spouse, that she was married to the U.S. citizen, that she had had terminated her prior marriage and that she had entered into the marriage in good faith.

The petitioner responded to the request for additional evidence and submitted further evidence, but failed to provide evidence of the legal termination of her first marriage until she filed the instant appeal.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here. The director determined that the petitioner failed to establish that she is the spouse of a citizen or lawful permanent resident of the United States and is eligible for immigrant classification based on that relationship. The director further noted discrepancies in documentation provided by the petitioner to Citizenship and Immigration Services (CIS).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

In review, the petitioner failed to submit any evidence of the legal termination of her prior marriage until the time of the appeal.

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<sup>1</sup> The evidence on the record includes the divorce decree of [REDACTED] and [REDACTED] dated November 14, 1984.

In review, the evidence is insufficient to establish that the petitioner is the spouse of a citizen or lawful permanent resident of the United States and is eligible for immigrant classification based on that relationship.

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.