



U.S. Citizenship
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FILE:

[Redacted]
EAC 04 049 50299

Office: VERMONT SERVICE CENTER

Date: AUG 17 2005

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:

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.

[Signature]
[Signature]

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 on appeal. The appeal will be dismissed,

The record reflects that the petitioner married United States citizen [REDACTED] on June 3, 1998 in Miami, Florida. The petitioner's spouse filed a Form I-130 petition in the petitioner's behalf on July 1, 1998. The petition and accompanying Form I-485, Application to Adjust Status, were denied on March 24, 2004, due to abandonment. The petitioner filed the instant Form I-360 petition on December 6, 2003, 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.

On August 23, 2004, the director requested the petitioner to submit further evidence. The director listed evidence that should be submitted, including:

- Evidence that the petitioner had been battered or subjected to extreme cruelty by his citizen spouse.
- Evidence that the petitioner is a person of good moral character.

The director afforded the petitioner 60 days in which to respond to the request for evidence.

The petitioner did not respond to the director's request and the director denied the petition on December 21, 2004, finding that there was insufficient evidence to support eligibility. *See* 8 C.F.R. § 204.1(h).

The petitioner files a timely appeal and claims that he did not receive a copy of the director's request for evidence. A review of the record indicates that the director properly issued the request for evidence to the petitioner's address of record. We note that the address listed by the petitioner on his Form I-360 is [REDACTED]. However, the petitioner lists his address on appeal as [REDACTED]. It appears that the address initially provided by the petitioner included a typographical error and resulted in his failure to receive the request for evidence. We note that the record does not contain any evidence that the director's request for evidence was returned as undeliverable. Moreover, it appears that the petitioner received the director's denial despite the fact that it was sent to the address mistakenly provided by the petitioner. Regardless, the director cannot be held responsible for error on the part of the petitioner.

Accordingly, we find insufficient evidence to establish that the director committed any procedural error, or any error of fact or law, in denying the petition based on the petitioner's failure to establish eligibility.

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.