



U.S. Citizenship
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Services

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FILE:

[Redacted]
EAC 03 213 53535

Office: VERMONT SERVICE CENTER

Date: DEC 02 2005

IN RE:

Petitioner: [Redacted]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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.

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 petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

According to the evidence in the record, the petitioner wed ██████████ in Temixco, Morelos, Mexico on October 10, 1989. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on June 21, 1996. The petition was approved by the California Service Center on July 25, 1996. On July 14, 2003, the instant self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her lawful permanent resident spouse during their marriage. In a decision dated February 8, 2005, the director denied the petition, finding that the petitioner failed to establish that she is a person of good moral character.

The petitioner submits a timely appeal with additional evidence.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident 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 or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] 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.

At the time of filing, the petitioner submitted insufficient evidence to establish that she was a person of good moral character. Accordingly, on July 6, 2004, the director requested additional evidence regarding the petitioner's good moral character. The director stated:

Submit evidence of your good moral character. The following may be submitted:

1. Your own affidavit supported by police clearances . . . or records from each place you resided for at least 6 months during the 3-year period before filing this petition. If you have resided outside the United States during this 3-year period, you must submit police clearances from those locations.
2. If police clearances, criminal background checks, or similar reports are not available for some or all locations, please submit an explanation and submit other evidence to support your affidavit. Evidence may include affidavits from responsible persons who can knowledgeably attest to your good moral character.

* * *

Please note: if the police clearance is researched by name only, you must supply the law enforcement agency with all aliases you have used, including maiden and/or married name(s), if applicable. *The Service notes that the record indicates you have been known by the following names: Irma Bizarro Martinez, Irma Garibay and Irma Bizarro Garibay.*

[Emphasis in the original.]

The petitioner responded to the director's request on September 17, 2004 and requested an additional 60 days in which to submit additional evidence. On October 12, 2004, the petitioner submitted the following documentation:

- A letter from the City of Anaheim Police Department indicating that, “based upon a name inquiry only,” the petitioner had no criminal record under the names [REDACTED] and [REDACTED]
- Copies of documents related to the petitioner’s arrest for assault in Fullerton, California on November 10, 2001.

The petitioner also submitted an affidavit attesting to the fact that she considers herself to be a person of good moral character and a receipt indicating that she requested a record check with the City of Fullerton Police Department.

On December 1, 2004, the director issued a notice of intent to deny the petition based upon the lack of evidence related to the petitioner’s good moral character. In the notice, the director indicated that the police clearance from the City of Anaheim Police Department was “insufficient . . . because it does not indicate that the investigating agency was aware of your use of other names and aliases . . .” The director noted the petitioner’s use of the alias [REDACTED] and stated that the name search performed by the City of Anaheim Police Department is “not sufficiently reliable as evidence because it appears you have claimed other identities and a different date of birth.” Finally, based upon the petitioner’s multiple aliases, the director requested the petitioner to submit “clearances based upon fingerprint analysis from both the City of Fullerton and the City of Anaheim or the state of California. The petitioner was afforded 60 days in which to respond to the director’s notice. When no further evidence was submitted in response to the intent to deny, the director denied the petition.

On appeal, the petitioner submits evidence that she completed a course in anger management. Although the petitioner also states that she “requested a clearance from the Anaheim and Fullerton Police Departments” for all of her aliases, no further clearances have been submitted on appeal. Regardless, in instances where the 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). 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). If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's initial request for evidence or after notice of the intent to deny. *Id.* Therefore, even if the petitioner has submitted the requested evidence on appeal, the AAO would not consider the sufficiency of the evidence.

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.

ORDER: The appeal is dismissed.