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**U.S. Citizenship
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Services**

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FILE: [REDACTED]
EAC 04 092 52518

Office: VERMONT SERVICE CENTER

Date: DEC 22 2005

IN RE: Petitioner: [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.


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 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.

The director denied the petition, finding that the petitioner failed to establish that she resided with her citizen spouse, that she has been battered by or subjected to extreme cruelty by her citizen spouse, that she is a person of good moral character and that she entered into the marriage in good faith.

The petitioner submits a timely appeal 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 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.

According to the evidence in the record, the petitioner wed United States citizen [REDACTED] in Bronx, New York, on August 28, 1996. On February 26, 1997, the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. On that same date, the petitioner filed a Form I-485 application. The petition and the application were denied by the District Director, New York District office, on November 3, 1998.

On February 6, 2004, 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 citizen spouse during their marriage.

At the time of filing the petitioner submitted assessments from three sessions with her psychotherapist, a copy of her marriage certificate, her divorce decree with translation, employment authorization card, social security card, her spouse's birth certificate, and copies of documents related to her previously denied Form I-130 petition and Form I-485 application. Because the director found this evidence was not sufficient to establish eligibility, on September 28, 2004, the petitioner was requested to submit additional evidence.

As evidence to establish that the petitioner resided with her spouse, the director requested evidence such as joint leases, mortgages, rental agreements, insurance policies, utility bills, bank statements, tax records or other financial documents listing a common address, or affidavits from friends and family verifying the claimed joint residence.

As it relates to the petitioner's claim of abuse, the director noted that the evaluations of the petitioner's psychotherapist were based upon information provided by the petitioner nearly three years after the petitioner indicated she stopped residing with her spouse and that the evaluations were not corroborated by any other evidence. Accordingly, the director requested further evidence in the form of:

- Reports and affidavits from police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials.
- Evidence that the petitioner has sought refuge in a shelter for the abused.
- Photographs of injuries and affidavits from witnesses.
- A detailed and specific statement from the petitioner describing her relationship with her spouse and the type of abuse suffered and any after effects.

As it relates to the petitioner's good moral character, the director requested

- An affidavit supported by police clearances . . . or records from each place the petitioner 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.

- 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.

The director noted that if the police clearance was based upon a name search only rather than fingerprints, the petitioner must submit clearances for all names used, including maiden and/or married names.

Finally, the director requested evidence related to whether the petitioner entered into the marriage in good faith, to include: insurance policies, bank statements, tax records, evidence of joint ownership of property, and affidavits from friends and family.

On November 24, 2004, the petitioner requested additional time in which to provide the requested documentation. The director granted the petitioner's request for additional time on January 5, 2005 and noted that pursuant to the regulation at 8 C.F.R. § 204.1(h), the petitioner had an additional 60 days to present additional evidence, to withdraw the petition, to request a decision based upon the evidence submitted, or to request additional time, not to exceed 120 days. The director also noted that if no response was received by the petitioner within the time allotted, the director would render a decision based upon the evidence contained in the record.

The petitioner failed to provide any additional evidence and the director denied the petition on May 17, 2005.

On appeal, the petitioner submits additional evidence and claims that the evidence "had been submitted . . . and deemed missing or misplaced." The petitioner does not provide any evidence such as a certified mail receipt or a date-stamped copy of the evidence to establish that this evidence was submitted to the director prior to the denial. Because the petitioner had been put on notice of a deficiency in the evidence and was given an opportunity to respond to that deficiency, without documentation to establish that the petitioner submitted the requested evidence in a timely manner in response to the director's request for evidence, 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 Obaigbena*, 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 request for evidence, not on appeal. *Id.*

Upon review of the record that was before the director at the time of his decision, we concur with the director's finding that the record is not sufficient to demonstrate eligibility.

First, the record contains insufficient evidence to establish that the petitioner entered into her marriage in good faith and that she resided with her spouse. The petitioner submitted no insurance policies in which the petitioner or her spouse is named as the beneficiary, bank statements or other documents that show a joint residence and use of accounts and utilities, or the joint ownership of property or automobiles. The petitioner submitted no

personal statement or affidavits from family and friends to support the petitioner's claim that she entered into her marriage in good faith and that she resided with her spouse. Given the petitioner's claim that she resided with her spouse for at least four years, the lack of documentation casts doubt on the petitioner's claim of a good faith marriage and that she resided with her spouse.

Second, the record contained insufficient evidence to establish that the petitioner has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during the marriage. The sole evidence of the petitioner's claimed abuse consists of three assessments from the petitioner's psychotherapist. As noted by the director, the assessments are based only upon the petitioner's recollection of events which occurred approximately 4 years prior to the assessments. In the assessments, Irene Torres, CSW, makes statements such as, the petitioner's spouse "controlled her and his verbal abuse *reportedly* led to low self-image," and the "patient *reported* she was unable to express her thoughts and feelings." [Emphasis added.] The assessments indicate that the petitioner's spouse was "jealous of [the petitioner's] relationship with [her] child," that he called her "stupid, worthless and he demanded money from her," that he "used her immigration status to manipulate her" and "abandoned the household in October 2000." The record, however, contains no sworn statement from the petitioner detailing her claim of abuse or affidavits from friends or family members who were witnesses to the claimed abuse. Without any other corroborating documentation, we do not find that the assessments carry sufficient weight to establish that the petitioner was battered or subjected to extreme mental cruelty.

Finally, as it relates to the petitioner's good moral character, the record lacked police clearances or any other evidence to establish the petitioner's good moral character.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.