



U.S. Citizenship
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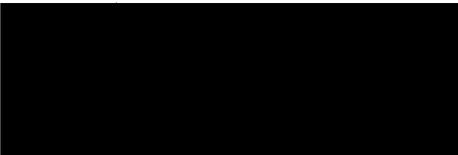
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 22 2005
EAC 03 196 51937

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:



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.

for 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 summarily 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.

According to the information contained in the record, the petitioner entered the United States on or about September 20, 1990 as a stowaway. The petitioner was issued an Order to Show Cause, Notice of Hearing and Warrant for Arrest of Alien on September 21, 1990. Proceedings against the petitioner were administratively closed on January 8, 1991 "until such time as the [petitioner] and the case is presented to the Immigration Judge for recalendaring and processing."

The petitioner wed United States citizen [REDACTED] on September 2, 1994 in Brooklyn, New York. On June 27, 1997, the petitioner's spouse filed a Form I-130 in the petitioner's behalf which was approved on September 29, 1997. The approval of the Form I-130 was automatically revoked on November 25, 1998 based upon the petitioner's spouse's written withdrawal.

On June 21, 2003, the petitioner filed the instant 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, his citizen spouse during their marriage. The petition was denied on January 11, 2005 based upon the director's finding that the petitioner failed to establish he has a qualifying marriage as the spouse of a United States citizen, that he is eligible for classification based upon that relationship, and that he has been battered by or subjected to extreme cruelty by his citizen spouse. Specifically, the director determined that the petitioner failed to respond to a specific request for evidence that the petitioner was married to his spouse in the two-year period prior to filing the petition, for evidence to establish whether the petitioner had been married prior to the qualifying marriage, evidence to demonstrate a connection between the petitioner's spouse's arrest and the petitioner's claim of abuse, and evidence regarding a December 8, 1998 court hearing.

The petitioner, through counsel, files a timely appeal dated February 2, 2005. With the filing of the Form I-290B, rather than identifying any error on the part of the director, counsel states the following as the reason for the appeal:

[Petitioner] advised that he advised prior counsel of the missing information. In response to missing information as to requirement #1, [Petitioner] is still married to [REDACTED] and a copy of their marriage certificate was previously submitted as acknowledged by your office; In regards to requirement #2, this is the first marriage for the beneficiary. His indication on his 1997 advance parole application that he needed to travel because "my ex-wife abandoned my children . . ." refers to the mother of his children. He was never legally married to the mother of his children, but just referred to her as his ex-wife for that is the custom in the Dominican Republic to refer to the person you are living with and/or have children with as your spouse even though there is no legal marriage; in regards to #5 counsel requires an additional 30-days in order to obtain additional evidence and further explanation of the hardship.

Counsel does not allege any error of fact or law on the part of the director. Instead, counsel attempts to address deficiencies in the record that were previously noted by the director yet unresolved by the petitioner prior to appeal. In instances such as this one, where a 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. If the petitioner had wanted his responses and/or evidence to be considered, he should have submitted such responses when requested to do so by the director. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Moreover, counsel's statements regarding the petitioner's current marriage and whether he had been married previously are not substantiated by any other corroborating evidence, including a sworn statement from the petitioner. Counsel provides no support for his claim regarding the "custom" in the Dominican Republic to refer to a person as a spouse despite that fact that there is no legal marriage. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

On March 1, 2005, the AAO received a letter from counsel to supplement the initial filing of the appeal. In his letter counsel indicates that the petitioner "does not have any further evidence to submit" to establish that the petitioner has been battered by or subjected to extreme cruelty by his spouse. Counsel then states:

[In his] review of the previously submitted evidence, which includes a psychotherapists reports, indicates that IN ITS TOTALITY, the evidence does in fact support his allegations of battery and extreme cruelty. All evidence must be considered in the context of a relationship and while any one incident in and of itself may not be sufficient to reach the required level of battery and/or extreme cruelty, taken as a whole, the evidence does in fact reach the required level.

Please review and reconsider your decision.

Counsel does not elaborate on his statement or point to any specific evidence other than the psychotherapist's reports to support his claim that the petitioner's evidence "does in fact support his allegations of battery and extreme cruelty." Counsel's general request for the AAO to review and reconsider the director's decision is not based upon any assertion of error.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Inasmuch as the petitioner has failed to specifically identify any erroneous conclusion of law or statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal.

ORDER: The appeal is dismissed.