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B9

[Redacted]

FILE: [Redacted]

Office: VERMONT SERVICE CENTER

Date: JUL 06 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:

[Redacted]

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 23-year old female 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 has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

The petitioner submits a timely appeal.

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 [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.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

*Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

*Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

According to the evidence contained in the record, the petitioner wed United States citizen [REDACTED] in Nashville, Tennessee on March 19, 2001. On November 24, 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 U.S. citizen spouse during their marriage.<sup>1</sup>

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the

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<sup>1</sup> Despite the fact that the Form I-360 indicates that the petitioner is now divorced, and counsel's claim that a copy of the petitioner's final decree for divorce is contained in the record, the record contains no such document. We note that although the record contains an "Order to Default and Set," the order itself indicates the cause is set for a final hearing on February 13, 2002 at 9:00 a.m. The order has not been signed or dated by the judge. The record contains no document indicating what happened, if anything, on February 13, 2002.

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.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

With her original filing, the petitioner submitted a statement in which she describes her marriage. She states that they did not consummate their marriage on their wedding night and afterwards:

[the] relationship started to cool down. He seem[ed] like he didn't care much about me and our relationship. He spen[t] most of his time with his friends, so we started to have arguments, and one of the biggest issues was that whenever I got home from work he was never there. I even thought he was cheating on me with somebody else...he said that he was going through a lot of problems and he hoped I could understand him. He told me that at some point after we got married, his preferences have changed. He said that the last thing he wanted was hurting me, but he couldn't hide his feelings anymore. I was in shock, and I asked him why he married me then, if he wasn't sure of his preferences . . . that night I grabbed some of my stuff and I went to my parents [sic] house. I told them what had happened and I decided to get divorce[d].

In the letter submitted by licensed psychologist [REDACTED] Ph.D., Ms. [REDACTED] indicates that she interviewed the petitioner on November 1, 2003. In her letter, Ms. [REDACTED] summarizes the information given to her by the petitioner about her spouse and their relationship, including the following:

There was no question that [the petitioner] had very strong feelings for [her spouse] at the beginning of the relationship, and he seemed genuine in his interest for her. On their wedding night, [her spouse] said he had too much to drink to have sex. During their honeymoon, he made no attempt to have sex with her. [The petitioner] thought she should be patient and not be aggressive but felt hurt and confused. During the next two and one half months, [the petitioner's spouse] started going out with men in the evening and never had sexual relations with her. [The petitioner] asked [her spouse] if he was cheating on her. [Her spouse] told her when he met her he thought he was in transition, but he now realized he was not. She realized he was telling her that he was gay. Stunned and devastated, she packed her bags and went home to her parents.

Ms. [REDACTED] concludes that the petitioner suffers from "Posttraumatic Stress Disorder" as a result of the "trauma she experienced in her marriage to [her spouse]."

The petitioner also provides a letter from [REDACTED] a friend of the petitioner's from high school. In her statement, Ms. [REDACTED] states that the petitioner told her that she was having problems in her marriage, that although "[s]he never told me exactly what was happening . . . she did tell me that she was disappointed with her marriage; that it was not what she expected," and that "[a]fter about three months, she told me that she was going to get divorced because they had many incompatible differences."

In a statement submitted by [REDACTED] the petitioner's sister, Ms. [REDACTED] states that after the petitioner's marriage, "something changed" between the petitioner and her spouse and "they began to have problems." Ms. [REDACTED] then states that after "about three months, she told us that she was going to leave [her spouse] because he had told her that he now had different preferences from what he had before."

The director found the documentation submitted with the initial filing was insufficient to establish eligibility. Therefore, on August 18, 2004, the director requested the petitioner to submit further evidence to establish that she resided with her spouse and that she entered her marriage in good faith. As it relates to the petitioner's claim of abuse, the director specifically requested:

- Reports and affidavits from: police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials.
- Evidence that you have sought refuge in a shelter for the abused.
- Photographs of your injuries, and affidavits from witnesses, if possible.
- A statement, in your own words describing the relationship with your abuser. Be as specific and detailed as possible.

The petitioner responded to the director's request on October 4, 2004, by submitting two envelopes showing correspondence mailed to the petitioner and her spouse at [REDACTED] "N 37216." No other evidence was submitted.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including the evidence furnished in response to the request for additional evidence. The discussion will not be repeated here.

On appeal, the petitioner submits a new psychological report, a new statement from the petitioner, a new statement from the petitioner's sister, and a statement from the petitioner's mother. 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).

In his request for further evidence, the director noted the deficiencies in the record as they related to the petitioner's claim of abuse and specifically listed the evidence to be submitted to support the petitioner's claims. Where, as here, 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. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). 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. *Id.*

We note that even if we considered the petitioner's appellate submission, we would not find them sufficient to make a finding that the petitioner was subjected to abuse or extreme cruelty.

In the statement submitted by the petitioner on appeal, the petitioner now claims that her spouse "ignored" her, left her by herself "without any money," "never asked for [the petitioner's] opinion," "didn't like [her] to talk to [her] family," and didn't like "the fact that [she] was going to school."

In the new statement submitted by [REDACTED] the psychologist states that the petitioner's spouse "exhibited negative and controlling attitudes towards" the petitioner, and that at times he would become "angry"

and “yell” at the petitioner, and would “thr[o]w glasses, CDs, books,” and curse at her. In her second statement, Ms. [REDACTED] concludes with the diagnosis that the petitioner suffers from “Major Depressive Disorder, Single Episode.”

We find the new claims of both the petitioner and Ms. [REDACTED] on appeal contradict their earlier statements. For instance, we note that the petitioner’s original statement only mentions the fact that her husband’s “preferences” had changed. She does not mention that she was scared of him, that he threatened her, or that he degraded her in any way. We further note that neither the petitioner’s original statement nor her appellate statement makes any indication similar to that of Ms. [REDACTED] that the petitioner’s spouse threw objects when he became angry.

The contradictions are also apparent in the diagnoses made by Ms. [REDACTED]. Specifically, in her original statement, she concludes the petitioner suffers from “Posttraumatic Stress Disorder,” while in her appellate statement, she concludes the petitioner now suffers from “Major Depressive Disorder, Single Episode.” There is no explanation for the change in diagnoses or an explanation for the addition of the new details in her statement. We note that there is no evidence that the petitioner was ever in therapy with Ms. [REDACTED] otherwise being treated as her patient other than to receive these two letters. The record reflects only that the petitioner was “interviewed” on the two occasions from which Ms. [REDACTED] makes her contradictory assessments.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, neither the petitioner’s sister nor her mother indicate that they witnessed the alleged abuse and describe their relationship as it was told to them by the petitioner. Accordingly, even if we considered the petitioner’s appellate submission, we would find the facts insufficient to establish that the treatment of the petitioner rose to the level of battery or extreme cruelty.

Moreover, beyond the decision of the director, we find the evidence contained in the record is insufficient to establish that the petitioner resided with her spouse. First, we note that the statements contained in the record contain insufficient detail to determine that the petitioner resided with her spouse. Further, even if the statements contained greater detail, there is scant documentary evidence to corroborate the fact that they resided together. We note that although the petitioner did submit two envelopes in response to the director’s request for evidence, the envelopes are undated. Thus, we are unable to determine if the envelopes were sent to the petitioner and her spouse during the time period in which the petitioner claims she resided with her spouse. For this additional reason, the petition may not be approved.

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.