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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

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FILE: [REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUL 13 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 Acting Director (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 Jamaica 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 citizen of the United States.

The director denied the petition, finding that because the petitioner failed to respond to the director's notice of intent to deny the petition, the record lacked sufficient evidence to make a determination as to the petitioner's eligibility.

The petitioner, through counsel¹, submits a timely appeal and presents the evidence the director requested in the notice of intent to deny.

Section 204(a)(1)(B)(ii) 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

¹ The term "counsel" refers to [REDACTED] the current counsel of record as indicated on the Form G-28, dated December 15, 2004. The term "previous counsel" refers to [REDACTED] Townsend, who represented the petitioner from the time of the initial filing through the issuance of the notice of intent to deny.

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 Brooklyn, New York, on October 11, 1995. On May 29, 1996, [REDACTED] filed a Form I-130 petition on the petitioner's behalf. The petition was denied by the District Director, New York District office, on January 30, 1997, based on the determination that the petitioner's marriage certificate and spouse's birth certificate were fraudulent.²

On January 13, 2000, the petitioner wed United States citizen [REDACTED]. On January 21, 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 citizen spouse during their marriage. The petitioner indicated on the Form I-360 that she resided with her spouse from January 3, 2000 until March 2002, and signed the petition on November 1, 2002, under penalty of perjury, affirming that information contained in the petition was true and correct.

Because the petitioner submitted no supporting documentation to establish her eligibility at the time of the initial filing, she was requested on November 6, 2003, to submit additional evidence. As it relates to the petitioner's claim of abuse, 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.

The director also requested information about the petitioner's spouse's name, date of birth, and country of birth, as well as evidence to establish the petitioner's claim that she resided with her spouse and entered the marriage in good faith. The director indicated such evidence could include: joint leases, mortgages, or rental agreements; insurance policies; utility bills; bank statements, tax statements, or other financial documents; affidavits from friends; and evidence of the petitioner's courtship and married life.

Finally, the director requested evidence related to the petitioner's good moral character including:

² Even if the petitioner were able to overcome all of the grounds for denial noted in this decision, based upon the finding regarding the submission of fraudulent documents, the petitioner would still be subject to section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C).

- 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.

On January 3, 2004, previous counsel for the petitioner requested an additional 60 days in which to provide the requested documentation. The petitioner responded to the director's request, with additional evidence, on January 6, 2004.

On July 7, 2004, the director issued a notice of intent to deny. In the notice, the director noted the previous determination of fraud relating to the denial of the Form I-130 filed in the petitioner's behalf. The director specifically requested the petitioner to indicate whether her marriage to her citizen spouse was legal. The director indicated if the response to this question was "no," the petitioner should submit an explanation as to why she held herself out as married before the district director.

The director also noted discrepancies in the time period the petitioner claimed she resided with her spouse and the petitioner's claim that her husband was incarcerated. Accordingly, the director requested the petitioner to submit a statement addressing these inconsistencies, as well as additional evidence to establish that she resided with and married her spouse in good faith.

Further, because the petitioner again submitted no documentation related to her good moral character, the director requested police clearances for the petitioner, including her aliases. The director noted that although previous counsel's submission indicated that a "New York Certificate of Good Conduct and a New York State Division of Criminal Justice Services Record" were submitted, the record contained no such documentation.

Finally, the director requested further evidence related to the petitioner's claim of abuse. Specifically, the director noted the lack of specific detail in the affidavit of the petitioner's witness and that the petitioner's claims of abuse did not reside to level of battery or extreme cruelty.

The petitioner failed to respond to the director's notice of intent to deny and the director denied the petition on November 30, 2004.

On appeal, counsel submits additional evidence and indicates that the reason for the petitioner's failure to submit a response to the director's notice of intent to deny in a timely fashion was "through no fault of the beneficiary" but rather "due to an office error." Counsel does not elaborate on this statement or describe the details regarding the "office error." Regardless, we do not find this explanation sufficient to overcome the director's stated ground for denial.

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 the request for further evidence, as well as the notice of intent to deny, the director noted the deficiencies in the record 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 or notice of intent to deny. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

In review, we find the evidence contained in the record at the time of the director's decision was not sufficient to demonstrate eligibility.

First, the record contained insufficient evidence to establish that the petitioner entered into her marriage in good faith and that she resided with her spouse. The evidence consists of:

- "Junk" mail addressed to the petitioner and her spouse at [REDACTED]
- Copies of two checks purportedly paid for the petitioner's spouse's outstanding bills.
- A copy of one savings bond that the petitioner bought on behalf of her spouse.
- A letter indicating the petitioner added her spouse to her insurance policy.
- Four photographs documenting the petitioner's marriage ceremony.

Although the petitioner claims that she resided with her spouse at the Montgomery Street address, the petitioner submits only junk mail. In the absence of a joint lease or other evidence to show that either the petitioner or her spouse was added to the original lease at [REDACTED], the junk mail sent to the address on Montgomery Street is not sufficient evidence that the petitioner actually resided with her spouse at that address.

Further, the checks submitted to establish the petitioner's good faith marriage and that she resided with her spouse are dated September 2002 and September 2003, respectively, six months and eighteen months after the petitioner claims she was abandoned by her spouse. Similarly, we note that the petitioner added her spouse as the beneficiary of her life insurance policy effective on June 10, 2002, more than three months after she claims she stopped residing with her spouse.

While the savings bond is more persuasive than any of the other documentation submitted by the petitioner, given the absence of any other evidence to establish the commingling of assets and joint financial liabilities, this single piece of evidence is not sufficient to establish the petitioner intended to establish a life with her spouse in good faith and that she resided with her spouse. We note the absence of insurance policies in which the petitioner or her spouse is named as the beneficiary, bank statements or other documents that show the joint use and access of both parties, and the absence of joint ownership of property or automobiles. Given the petitioner's claim that she resided with her spouse for more than two years, the lack of any further

documentation, including photographs, 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, the citizen or lawful permanent resident during the marriage. The evidence submitted to establish the petitioner's claims of abuse consists of the petitioner's statement and the statement of an acquaintance of the petitioner.

In her statement, the petitioner indicates that in January 2002, she began to "notice some changes" in her spouse. She states that her spouse would come home late or not at all, that he stopped working, and became verbally abusive by calling the petitioner names. The petitioner further claims that her husband had an affair with another woman and had a child with her and that her spouse "forgot all about the [marriage] vow when [the petitioner] was diagnosed with breast cancer in April of 2002."

In a separate letter, provided by [REDACTED] a friend of the petitioner, Ms. [REDACTED] states that "[t]hings were working out quite well with [the petitioner and her spouse] until [the petitioner] was diagnosed with breast cancer in 2002." [REDACTED] further states that the petitioner's spouse "started drinking, staying out" and "verbally" abused the petitioner. [REDACTED] does not provide specific details about the claimed verbal abuse and does not indicate that she actually witnessed the abuse. The fact that the petitioner's spouse called her names or had an affair that resulted in a child, does not establish that the petitioner was subjected to battery or extreme mental cruelty.

Third, 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 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.