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

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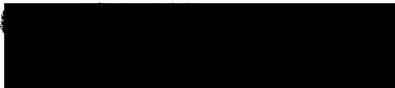
Office: VERMONT SERVICE CENTER

Date:

JUL 22 2005

IN RE:

Petitioner:



Beneficiary:

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native of Mexico who is seeking 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 her lawful permanent resident spouse on December 24, 1997 in Chandler, Arizona. On January 31, 1998, the petitioner's spouse filed a Form I-130 petition on her behalf. The petition was approved on August 13, 2001. The instant self-petition was filed on March 2, 2004 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 permanent resident spouse during their marriage. On the Form I-360 petition, the petitioner claims to have resided with her spouse from December 1994 until May 2003. The petition was denied on January 25, 2005.¹

The petitioner submits a timely appeal.

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;

¹ The director's decision was mistakenly dated January 25, 2006.

(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)(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 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.

With the filing of her petition, the petitioner submitted the following documentation:

- A copy of the petitioner's birth certificate with translation.
- A copy of the petitioner's son's birth certificate with translation.
- A copy of the petitioner's spouse's alien registration card.
- A copy of the petitioner's marriage certificate.
- A copy of the divorce decree for the petitioner's spouse's prior marriage.
- A copy of the petitioner's spouse's social security card.
- A copy of the petitioner's employment authorization and social security cards.
- A copy of the petitioner's son's employment authorization and social security cards.
- Copies of two police reports.
- A statement from the petitioner.
- A statement from the petitioner's sister.

The director found this evidence insufficient to establish eligibility and on October 4, 2004, requested the petitioner to submit additional evidence. The director specifically requested further evidence that the petitioner entered her marriage in good faith to include:

Insurance policies . . . bank statements, tax records and other documents that show you share accounts and other similar responsibilities . . . evidence of your courtship, wedding ceremony, residences, special events, . . . evidence of joint ownership of property (such as a home, automobile, etc.) . . . birth certificates of children born to you and your spouse.

The director also requested evidence of the petitioner's good moral character. The notice states, in pertinent part, that the following documentation 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.

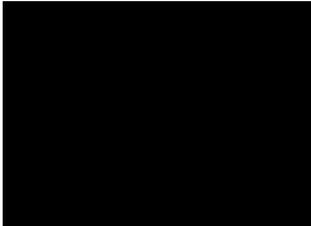
If you have resided outside the United States during this 3-year period, you must submit police clearances from those locations.

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.

Service records indicate you have used aliases, including:



Clearances are required for these aliases and all aliases used; otherwise a fingerprint-based clearance is considered acceptable.

The petitioner did not respond to the director's request and the director denied the petition on January 25, 2005 finding that there was insufficient evidence to support eligibility. *See* 8 C.F.R. § 204.1(h).

On appeal, the petitioner submits a statement claiming that she did not submit the requested documentation at the time it was requested by the director because she "fled with only [her] son from [her] home and left everything behind in a state of emergency."

The regulations state 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. 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).

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). We emphasize that the director did not request some vague class of documentation, but rather specific documents (such as police clearance for all aliases), leaving no ambiguity as to what documents were required. 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.* Although we do not

dispute the petitioner's reason for failing to respond to the director's request, we do not find it sufficient to excuse such failure. We note that the director's notice clearly indicated that the petitioner could request additional time, as needed. In this instance, the petitioner made no attempt to contact the director and request additional time due to her claimed circumstances.

At the time of the director's decision, the record lacked any evidence related to the petitioner's good moral character. Further, the record lacked evidence to establish the commingling of assets and joint financial liabilities. Given the petitioner's claim that she resided with her spouse for nearly a decade, we would expect the petitioner to be able to submit insurance policies in which she 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 joint ownership of property or automobiles. Although the petitioner submits her own statement and a statement from her sister, the statements cannot take the place of documentary evidence of the petitioner's good faith marriage. We note that the statements provide little detail about the petitioner's courtship or married life.

Even if we considered the petitioner's appellate submission, the documentation is insufficient to establish eligibility. The submission consists of:

- Police clearances under the names [REDACTED] and [REDACTED]
- The statement of the petitioner's sister that was previously submitted.
- A letter from APS regarding the petitioner's payment history.
- Copies of two photographs.

First, the petitioner submitted police clearances for only two of the five names listed by the director. Second, the letter from APS, although addressed to both the petitioner and her spouse, is dated February 25, 2005. The letter indicates that the length of service for the account in question is "0 year(s) and 11 month(s). Given that the petitioner indicates she last resided with her spouse in 2003, this letter, written nearly two years later, indicating the length of the account as "11 months," is not sufficient to establish the joint nature of this account. Finally, the undated, uncaptioned photographs, while documenting that the petitioner and her spouse were together at a particular place and time, carry little evidentiary weight in establishing a good faith marriage. We again note that for a marriage in which the petitioner claims to have resided with her spouse for nearly ten years, we would expect more than two photographs.

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.