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**U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JUN 10 2005**
EAC 03 261 50950

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[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 61-year old female native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director denied the petition, finding the evidence contained in the record did not establish eligibility.

The petitioner, through counsel, 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 Attorney General 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)(ix) states:

Good Faith Marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

According to the evidence in the record, the petitioner wed lawful permanent resident [REDACTED] Miami, Florida on April 24, 1990. On September 22, 2003, a 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 lawful permanent resident spouse during their marriage. According to the Form I-360, the petitioner and her spouse resided together from April 1990 until or through October 1990.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(H) also requires the petitioner to establish that she entered into the marriage with her spouse in good faith.

In the brief submitted with the filing of the petition, former counsel stated:

[The petitioner] does not have proof that she married her husband in good faith and not for the purpose of obtaining immigration benefits. In the place of such proof she has submitted her statements in an affidavit as to her good faith marriage to [her spouse].

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[The petitioner] does not have direct proof of her residence with [her spouse] but she has submitted an affidavit regarding the address they shared together . . . In addition, she has submitted translated letters from Mr [REDACTED] and Mr [REDACTED] both of whom testify that [the petitioner and her spouse] lived together at the address contained in her affidavit. Also, [the petitioner] has included a letter addressed to the address where she and [her spouse] lived.

As the director found the evidence contained in the record was insufficient to establish that the petitioner entered into the marriage in good faith and that she resided with her spouse, she was requested on August 5, 2004, to submit additional evidence. The director listed the type of evidence the petitioner could submit to establish each of these claims.

The petitioner failed to respond to the director's request and the petition was denied accordingly.

On appeal, current counsel for the petitioner argues that the petitioner's failure to timely respond to the director's request was "due to the ineffective assistance" of the petitioner's previous counsel. Counsel states that "evidently [former counsel] did not realize that a response should be provided even if there are no documents available."

Counsel's statements, however, are not supported by any documentary evidence. Although he recites facts and makes his own assumptions about former counsel's failure to respond, his conclusion as to the ineffective assistance of former counsel is not based on any official finding. 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).

Even if we accept counsel's argument and review the evidence submitted on appeal, we find the evidence is insufficient to establish that the petitioner entered into the marriage to the citizen in good faith and that she resided with her spouse. The evidence consists of the following:

- Two affidavits from acquaintances of the petitioner attesting that they "would stop by and say hello" to the petitioner and her spouse.
- An affidavit from an acquaintance of the petitioner attesting that "on occasions" she would visit the petitioner and her spouse at their home.

It is noted that the petitioner failed to submit insurance policies in which the petitioner or her spouse were named as the beneficiary. The petitioner failed to submit tax records and other documents to show that they shared accounts and other responsibilities. She failed to submit evidence that they jointly owned or rented property. No children were born of the marriage. She failed to submit a lease indicating that the petitioner and his wife were co-tenants. The sole evidence contained in the record to establish the bona fides of the petitioner's marriage and the fact that she resided with her spouse, is affidavits. However, these affidavits are general and lack sufficient detail. In review, the evidence is insufficient to establish that the petitioner married her spouse in good faith and that she resided with him.

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.