



U.S. Citizenship
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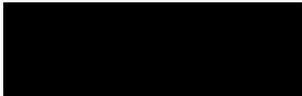
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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 16 2005

IN RE:

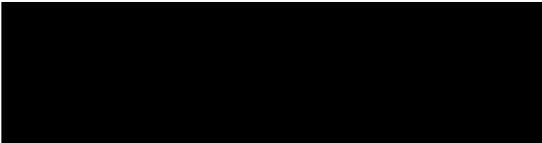
Petitioner:



Beneficiary:

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.

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of India 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 evidence contained in the record did not establish eligibility.

The petitioner submits a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides, respectively, 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 in the United States 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 record reflects that the petitioner wed United States citizen [REDACTED] on April 25, 2001 in Nassau County, New York. On April 30, 2001, the petitioner's spouse filed a Form I-130 petition on behalf of the petitioner. Action was terminated on the Form I-130 petition due to abandonment on October 3, 2002.

On August 29, 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, his U.S. citizen spouse during their marriage. However, the petitioner submitted no documentary evidence to support his claim of eligibility.

Accordingly, on July 20, 2004, the director requested the petitioner to submit further evidence. The director listed evidence that should be submitted, including:

- Evidence of the petitioner's spouse's United States citizenship.
- The petitioner's marriage certificate.
- Evidence that the petitioner and/or his child(ren) were subject of battery or extreme mental cruelty committed by the petitioner's spouse.
- Evidence of the petitioner's good moral character.
- Evidence that the petitioner married his spouse in good faith.

The director afforded the petitioner 60 days in which to respond to the request for evidence.

The petitioner did not respond to the director's request and the director denied the petition on November 16, 2004, finding that there was insufficient evidence to support eligibility. *See* 8 C.F.R. § 204.1(h).

On appeal, the petitioner submits evidence that he responded to the director's request on November 18, 2004, two days after the director's denial and nearly four months after the director's initial request for evidence.

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).

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). Accordingly, the AAO will not consider the sufficiency of the evidence submitted on appeal and

the appeal will be adjudicated based on the record of proceeding before the director at the time of her decision.

We note that at the time of filing the instant petition, the record contained a copy of the petitioner's spouse's naturalization certificate and marriage certificate.¹ Accordingly, the portion of the director's request for evidence and denial based on the lack of evidence related to the petitioner's spouse's citizenship and marriage was in error.

However, the director's request for evidence correctly indicated that the record lacked evidence of the petitioner's good moral character, that he entered into the marriage in good faith, and that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen during the marriage. If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence, not on appeal. *Id.*

As previously noted, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

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.

¹ This evidence appears to have been submitted in support of the Form I-130 filed in the petitioner's behalf by his citizen spouse.