



U.S. Citizenship
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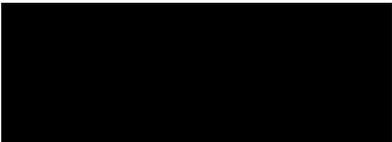
FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 27 2005

EAC [REDACTED]

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:



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 (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 Peru 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 record reflects that the petitioner wed United States citizen Edwardo Umpierro on December 11, 2001, in Paterson, New Jersey. On November 1, 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.

On August 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.
- Evidence that the petitioner entered into her marriage in good faith.
- Evidence that the petitioner resided with her citizen spouse.
- Evidence that the petitioner is a person of good moral character.

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 December 14, 2004, finding that there was insufficient evidence to support eligibility. *See* 8 C.F.R. § 204.1(h).

The petitioner, through counsel, files a timely appeal.¹ On appeal, counsel claims that the petitioner never received notice of the director's request for evidence. Counsel claims that she first received a copy of the director's request when it accompanied the director's denial of the petition.

In support of the appeal, counsel submits a printout from Citizenship and Immigration Services' (CIS) on-line case status verifier, which indicates that as of September 27, 2004, counsel was aware that a request for evidence had been issued. Although counsel claims that she called the Customer Service Center "on numerous occasions," to receive a copy of the director's request, such a claim cannot be verified. We note that 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).

A review of the record indicates that the director properly issued the request for evidence to petitioner's counsel, at counsel's address of record.² Further, the record does not contain any evidence that the director's request for evidence was returned as undeliverable or for any other reason.

¹ Although the appeal was filed on Tuesday, January 18, 2005, 35 days after the director's decision was mailed, we consider this appeal to be timely filed as Monday, January 17, 2005 fell on the Martin Luther King, Jr. holiday when Federal offices were closed.

Accordingly, we find insufficient evidence to establish that the director committed any procedural error, or any error of fact or law, in denying the petition based on the petitioner's failure to establish eligibility.

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.³

ORDER: The appeal is dismissed.

² The director's denial of the petition was mailed to and received by counsel at this same address.

³ Despite our dismissal of the petitioner's instant appeal, we note that the petitioner is not precluded from the future filing of a new Form I-360 petition provided she can meet the eligibility requirements.