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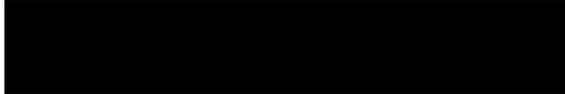
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FILE: [Redacted]  
EAC 03 153 52843

Office: VERMONT SERVICE CENTER

Date: JUN 28 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:

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 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 the Philippines 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 September 30, 2002 in Virginia Beach, Virginia. On April 19, 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 April 8, 2004, the director requested the petitioner to submit further evidence. The director listed evidence that should be submitted, including:

- A detailed and specific statement outlining incidents of abuse.
- Police reports, psychological reports, and/or notarized affidavits from third parties to corroborate the claimed abuse.
- Evidence that the petitioner resided with her citizen spouse.
- Evidence that the petitioner married her 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 August 24, 2004, finding that there was insufficient evidence to support eligibility. *See* 8 C.F.R. § 204.1(h).

On appeal, the petitioner submits some of the evidence requested by the director and states the following as the reason for the appeal: "Additional support statement and specific details."

The evidence submitted on appeal includes:

- A new statement from the petitioner.
- A letter from the petitioner's neighbor indicating he "rescued" the petitioner from her spouse.
- An additional copy of the petitioner's marriage certificate.

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). 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, not on appeal. *Id.* 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.

At the time of the director's decision, the record contained:

- A copy of the petitioner's spouse's birth certificate.
- The petitioner's written statement.
- A letter from the City of Virginia Beach indicating the petitioner has no criminal record.
- A birth letter issued by the [REDACTED] indicating that a child was born to the petitioner and her spouse.
- The petitioner's marriage certificate.
- Evidence of a joint bank account and check card.
- A copy of the petitioner's bill of complaint for divorce from her spouse.

While we find such evidence is sufficient to establish that the petitioner is a person of good moral character, and that she resided with her spouse, we find that there is insufficient evidence to establish that the petitioner entered into the marriage in good faith.

The record remains absent evidence of insurance policies in which the petitioner or her spouse are named as the beneficiary or bank statements or other evidence of joint ownership or rental of property. Although the petitioner did submit evidence that the petitioner and her spouse had a joint account at Suntrust Bank, the record contains no evidence that there was ever any activity on the account, much less that the activity was joint in nature. Further, although the record contains a letter from the [REDACTED] which lists the petitioner and her spouse as parents of a child born at the hospital, the petitioner has failed to submit a copy of the child's birth certificate. Without evidence of a birth certificate, the letter from the hospital carries very little evidentiary weight in establishing that a good faith marriage existed between the petitioner and her spouse.

Further, the petitioner's single statement is insufficient evidence to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage. Not only does the petitioner's statement lack the specific detail necessary to establish her claim, but it is uncorroborated by any other independent, objective evidence, such as police reports, medical reports, or third party witnesses.

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.