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FILE: [REDACTED]
EAC 03 196 51988

Office: VERMONT SERVICE CENTER

Date: JUN 30 2005

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:

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

The petitioner is a native and citizen of the Dominican Republic 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.

According to the evidence contained in the record, the petitioner wed United States citizen [REDACTED] on September 20, 1993 in the Bronx, New York. The petitioner's spouse filed a Form I-130 on the petitioner's behalf on June 8, 2001. The petition was terminated when the petitioner failed to appear for her interview. On June 20, 2003, the petitioner filed the instant petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse. The Form I-360 petition indicates that the petitioner and her spouse resided together from September 1993 until May 2003.

The director denied the petition, finding that the petitioner failed to establish that she resided with her United States citizen spouse during the marriage and that she entered into the marriage to the citizen in good faith.

The petitioner files 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 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;

* * *

(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.

Because the petitioner furnished insufficient evidence to establish her eligibility at the time of filing, she was requested on June 14, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish that she resided with her citizen spouse during the marriage and that she entered into her marriage in good faith.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to the request for additional evidence. The discussion will not be repeated here.

On appeal, the petitioner submits copies of documents previously submitted but no further evidence related to her good faith marriage or evidence that she resided with her spouse.

In review, we find the record insufficient to establish that she entered into her marriage in good faith and that she resided with her spouse. As it relates to these two claims, the record contains:

- The petitioner's marriage certificate.
- Affidavits documenting the purported abuse suffered by the petitioner.
- Evidence of the joint filing of income taxes for the 1998, 1999, 2000, and 2001 tax year.

As the affidavits do not detail the petitioner's marriage or courtship, other than to describe the alleged abuse, we do not find the affidavits support a finding that the petitioner entered into the marriage in good faith or that she resided with her husband. Further, although the marriage certificate is evidence of a legal marriage, the fact that a legal marriage took place does not establish that the marriage was entered into in good faith or that the petitioner resided with her spouse after the marriage ceremony.

Although the evidence related to the joint filing of taxes is more persuasive than the affidavits and marriage certificate, the record lacks documentation dating back to the inception of the marriage in 1993. The

petitioner fails to provide any explanation for the lack of documentation related to the 1993, 1994, 1995, 1996, 1997, and 1998 tax years. Additionally, despite the petitioner's claim that she resided with her spouse for nearly 10 years, the record remains absent evidence of insurance policies in which she or her spouse is named as the beneficiary, or bank statements or other documents that show she shared accounts and other responsibilities with her spouse. The petitioner failed to submit evidence of joint ownership or rental of property. No children were born of the marriage. Accordingly, we find the record lacks evidence of the commingling of funds and assets or joint financial liabilities, or other objective evidence to indicate that the petitioner and her husband intended to establish a life together in good faith and that they did, in fact, reside together during the marriage.

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.