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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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BA

FILE: [REDACTED]  
EAC 03 122 54649

Office: VERMONT SERVICE CENTER

Date: MAY 17 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.

for 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 33-year old female native and citizen of Japan 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 and indicates that she needs 60 days to submit a brief and/or evidence. We note that this extension can only be granted if the petitioner shows good cause. The petitioner has failed to demonstrate the good cause necessary to be entitled to such an extension. Further, the regulations do not allow the petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed, the petitioner may not freely supplement the record up until the date of appellate adjudication. Regardless, to date, more than three months after the filing of the appeal, the record contains no further submission from the petitioner. We, therefore, consider the record to be complete as it now stands.

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.

According to the evidence in the record, the petitioner wed United States citizen [REDACTED] on March 4, 2002, in Brattleboro, Vermont. On March 12, 2002, the petitioner's spouse filed a Form I-130 petition on her behalf. The petitioner's spouse withdrew his form I-130 petition on September 17, 2002. According to the Form I-360, the petitioner and her citizen husband "sporadically stayed together" from January 2002 until September 2002. On or about March 3, 2003, the petitioner filed a self-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 during their marriage. On April 30, 2003, the petitioner was placed in removal proceedings. She is scheduled for another immigration hearing on December 6, 2005.

Because the petitioner furnished insufficient evidence to establish her good moral character, that she resided with her United States citizen spouse during the marriage, that she entered into her marriage with the citizen spouse in good faith, and that she has been battered or the subject of extreme cruelty perpetrated by her citizen spouse, she was requested on March 15, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish each of these claims.

On April 7, 2004, the petitioner submitted a copy of a letter from the Watertown Police Department indicating that the petitioner "has no disqualifying record currently on file" with the department. The petitioner also submitted her own letter indicating that she "will be forwarding the other information [the director] requested."

On May 12, 2004, almost 60 days after the director's original request for evidence, the petitioner requested an additional 60 days "to gather the additional information requested." In addition to requesting an extension, the petitioner's letter indicates, "she has never resided with [her] spouse," but notes that "it is quite common in this country that married people live apart." The petitioner further claims that her citizen spouse was "extremely and psychologically abusive" and "cruel," but provides no specific detail or documentary evidence to substantiate these claims. Although the petitioner did submit a copy of the termination of her previous marriage and evidence of joint bank account, she did not submit any of the other evidence requested by the director.

On July 9, 2004, the petitioner submitted a letter indicating that she has "two other affidavits to send . . . from people who have first hand knowledge of the facts and events of my case. Hopefully these two letters should be mailed [sic] next week." The applicant also attempts to clarify her previous statement in which she indicated that she never resided with her spouse. She states:

Although [REDACTED] and I never had an apartment of our own [sic] because we could not afford one [sic], we did "live together" (spend days together in the same house and bed) for the two months before the marriage and the three months after we were married either at his

Grandmother's (where he was staying) or where I was staying in Watertown. We did, therefore, live and reside together in two different places alternately as many less than well off people do and less than well off married people do. We resided together in this manner for 5 months at which point [REDACTED] abandoned me for the reasons I've stated and refused to help or support me in any way.

Even if we were persuaded by the petitioner's statement that simply "liv[ing] and resid[ing] together in two different places alternately" satisfies the regulatory requirement that the petitioner reside with her citizen spouse, the petitioner has not submitted any documentary evidence to substantiate this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Additionally, the petitioner submitted a letter from her employer, further evidence of her joint account with her citizen spouse, and a copy of her marriage certificate. No further evidence was submitted.

The director denied the petition on December 20, 2004, finding that as the petitioner failed to respond to the director's request for evidence in its entirety, a determination as to eligibility could not be made.

On appeal, the petitioner states:

There seems to be some confusion about my petition. I believe that I provided the additional information requested by [the director] including a request for additional time to provide further information which I never heard from this office about in terms of granting or denying. I do not believe that I failed to respond to their request. Also, they send the denial to the wrong address. I have been seeing a psychiatrist and need time to get a letter from him. I am now employed full-time in my field of training. Lastly, my case involves passive abuse which is recognized as abuse under American law.

The petitioner does not submit any further documentary evidence in support of her appeal.

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).

In his request for further evidence, the director noted the deficiencies in the record and specifically listed the evidence to be submitted to support the petitioner's claims. Although the petitioner did respond to the petitioner's request for evidence, the petitioner did not submit all of the evidence requested. Specifically, the petitioner failed to provide any documentary evidence that she resided with her United States citizen spouse during the marriage, that she entered into her marriage with her citizen spouse in good faith, and that she has been battered or the subject of extreme cruelty perpetrated by her citizen spouse. As noted previously, the petitioner's unsupported statements do not meet the burden of proof in this proceeding. *Matter of Treasure Craft* at 190.

A review of the record before the director at the time of his decision reflects that the evidence is insufficient to establish that the petitioner resided with her citizen spouse and that she entered into the marriage in good faith.

The petitioner failed to submit insurance policies in which she or her spouse is named as the beneficiary. She failed to submit tax records and other documents that show she shared accounts and other responsibilities with her spouse. Although she submitted evidence that she and her spouse had a joint bank account, the petitioner failed to establish when the account was opened or that they had jointly used the account. She failed to submit evidence of joint ownership of property. The record has not established a 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 and that they resided together.

The evidence in the record is also insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her citizen husband. The petitioner states that her citizen spouse has "given [her] no money at all to live on since July of 2002," and that he "began avoiding [her] and avoiding getting [their] own place together and neglecting [her] one month" after they were married. The petitioner also claims that her citizen spouse "purposefully messed up the [CIS] interview to get rid of [her]" and that he was "angry and hostile" towards her. The conduct described by the petitioner does not rise to the level of "extreme cruelty."

The petitioner's appellate submission does not overcome this finding.

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.