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U.S. Citizenship
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Services

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BA

FILE: [Redacted]
EAC 04 053 52585

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)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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 44-year old female native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

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 30 days to submit a brief and/or evidence. To date, more than three months later, 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)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States, 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 on the record, the petitioner wed lawful permanent resident [REDACTED] on May 14, 1977 in Mexico. On December 13, 2003, a 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 lawful permanent resident spouse during their marriage. According to the Form I-360, the petitioner and her permanent resident spouse resided together from April 1977 until May 1999.

Because the petitioner furnished insufficient evidence to establish her eligibility, she was requested on August 27, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish that she resided with her lawful permanent resident spouse during the marriage, that she entered into her marriage in good faith, that she has been battered or the subject of extreme cruelty perpetrated by permanent resident spouse, and that she is a person of good moral character.

The director denied the petition on January 4, 2005, finding that as the petitioner failed to respond to the director's request for evidence, a determination as to eligibility could not be made. At the time of the director's decision, the evidence contained in the record consisted of:

- The petitioner's marriage certificate and translation.
- The petitioner's birth certificate and translation.
- Court documents related to the petitioner's spouse's arrests and convictions for driving under the influence, unlicensed driving, petty theft, and the willful and unlawful infliction of corporal injury resulting in traumatic condition upon the petitioner.
- A copy of the petitioner's spouse's resident alien card.

On appeal, the petitioner states:

Please give me extra 30 days to provide those proofs. I am still looking for the documents. My documents were taken from me [by] my husband and he has them and one of my sons is trying to get them back.

No additional evidence was submitted in support of the 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. 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 Obaighena*, 19 I&N Dec. 533 (BIA 1988). The petitioner's statement that she is in the process of gathering evidence is immaterial. 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. *Id.*

A review of the record before the director at the time of his decision reflects that the evidence was insufficient to establish the petitioner's eligibility.

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.