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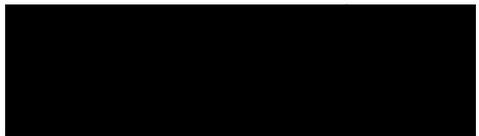
U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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BA



FILE: [Redacted]  
EAC 03 261 55672

Office: VERMONT SERVICE CENTER

Date: MAY 17 2006

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for Special Immigrant Battered Child pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

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. The director reopened the matter on the petitioner's motion to reopen and again denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 21-year old native of Brazil who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iv), 8 U.S.C. § 1154(a)(1)(A)(iv), as the battered child of a United States citizen. According to the evidence in the record, the petitioner's mother wed her United States citizen spouse on March 27, 2001 in Mount Vernon, New York. The petitioner filed the instant petition on September 22, 2003. In a decision dated September 28, 2004, the director denied the petition, finding that the petitioner failed to establish that he resided with the citizen parent, that he has been battered or the subject of extreme cruelty perpetrated by the citizen parent, and that he is a person of good moral character.

On November 22, 2004, the petitioner submitted a motion to reopen with additional evidence to establish his eligibility. In a decision dated January 10, 2005, the director determined the petitioner had established he was a person of good moral character, but that the record continued to lack sufficient evidence that the petitioner ever resided with his citizen parent and that he has been battered or the subject of extreme cruelty perpetrated by his citizen parent.

The petitioner submits a timely appeal and indicates that he is sending a brief and/or evidence within 30 days. 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)(iv) of the Act provides, in pertinent part, that an alien who is the child of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

- - the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent; and
- - he resides, or has resided in the past, with the citizen parent.

The regulation at 8 C.F.R. § 204.2(e)(1)(i) states, in pertinent part, that:

A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she:

- (A) Is the child 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 parent;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent; [and]

(F) Is a person of good moral character.

\* \* \*

The regulation at 8 C.F.R. § 204.2(e)(2)(iv) states:

*Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abused victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The regulation at 8 C.F.R. § 204.2(e)(1)(vi) states, in pertinent part:

*Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation . . . shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident parent, must have been perpetrated against the self-petitioner . . . and must have taken place while the self-petitioner was residing with the abuser.

The regulation at 8 C.F.R. § 204.2(e)(1)(i)(D) also requires the petitioner to show that he resided with the citizen parent.

Because the petitioner furnished insufficient evidence to establish that he has been battered by or subjected to extreme mental cruelty committed by his citizen stepparent, that he resided with his citizen stepparent, and that he is a person of good moral character the director requested further evidence on July 21, 2004. The director listed evidence the petitioner could submit to establish each of these claims.

The director denied the petition and subsequently reopened the petition on the petitioner's motion to reopen. In her decisions, the director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence and on motion. The discussions will not be repeated here.

On appeal, the petitioner submits a letter from the sister of the petitioner's sister's babysitter as evidence that the petitioner lived with his citizen stepparent and states, "I lived with my stepfather at [REDACTED] N.Y. I am sending an affidavit confirming." The petitioner submits no evidence relating to his claim that he has been battered by or subjected to extreme mental cruelty committed by his citizen parent. 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)).

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, it should have submitted the documents in response to the director's request for evidence or in the petitioner's motion to reopen. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Based on the record before the director at the time of her decision, we concur with the director's finding that the petitioner failed to establish that he resided with his United States citizen parent and that he has been battered or the subject of extreme cruelty perpetrated by his citizen parent.

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.