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U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted]  
EAC 01 192 52075

Office: VERMONT SERVICE CENTER

Date: **MAY 20 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 Acting Director (Director), Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 52-year old native of Nigeria who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen. According to the evidence on the record, the petitioner wed her United States citizen spouse on November 27, 1990 in Washington, D.C. The petitioner claims to have resided her citizen spouse from 1991 until 1994. The petitioner filed the instant petition on May 1, 2001. In a decision dated November 24, 2004, the director denied the petition, finding that the petitioner failed to establish that she had a qualifying marriage and that she is a person of good moral character.

The petitioner submits a timely appeal and requests 30 days in which to submit a brief and/or evidence to support the appeal. To date, more than four 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)(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.

Because the petitioner furnished insufficient evidence to establish eligibility, she was requested on August 16, 2001, to submit additional evidence. The director listed evidence the petitioner could submit to establish she is a person of good moral character.

On September 9, 2004, the director issued a notice of intent to deny noting that the petitioner had been married prior to her marriage to her citizen spouse and the petitioner had failed to establish that she had divorced her previous spouse. The director further noted that the petitioner failed to submit evidence that she is a person of good moral character. In the notice of intent to deny, the director specifically requested the petitioner to submit evidence of the legal termination of her marriage to Benson Obasuyi and a police clearance.

The petitioner submitted a response dated October 22, 2004 with a letter but provided no additional evidence. The director denied the petition on November 24, 2004 after reviewing and discussing the evidence furnished by the petitioner, including the letter submitted in response to the notice of intent to deny. The director's discussion will not be repeated here.

On appeal, the petitioner submits a letter indicating she attempted to obtain a police clearance and a statement that she was never married previously. The petitioner also submits a document entitled "Certificate of Spinsterhood," and an affidavit from the sister of Benson Obasuyi.

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. *Id.* Under the circumstances, the AAO need not consider the sufficiency of the evidence submitted on appeal.

Even if the evidence submitted on appeal is considered, we note that the petitioner has not submitted the requested police clearance. Although we do not dispute that the petitioner made an effort to get the required clearance, the regulation can only be satisfied with an actual police clearance.

As it relates to the issue of the petitioner's prior marriage, we note that the record contains a Form I-130 petition submitted by the petitioner's citizen spouse on her behalf. The petition was denied on June 23, 1993 because the record lacked evidence that the petitioner had obtained a divorce from her Nigerian husband prior to marrying her citizen spouse. In support of that petition, the petitioner and citizen spouse submitted a copy of a document from the Lagos State Judiciary, dated October 10, 1979, documenting the petitioner's request for a dissolution of her marriage to Benson Obasuyi based on "desertion, cruelty, lack of personal care and affection." The court granted the divorce and gave the petitioner custody of the two children born to the marriage.

In a letter submitted by the petitioner in support of the Form I-130 petition filed in her behalf, the petitioner stated that she "was married by native [and] customs," and that her "divorce paper was real; very, very real. God is my witness, the 1<sup>st</sup> one was 13 years ago." The petition was denied, in part, because the petitioner failed to provide evidence of the legal termination of the petitioner's prior marriage.

On appeal, the petitioner now claims that she was never married. She submits an affidavit and "Certificate of Spinsterhood" to support this statement. All of these statements contradict the claims made by the petitioner during the adjudication of her Form I-130. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 sustained that burden. Accordingly, the petition will be denied.

**ORDER:** The petition is denied.