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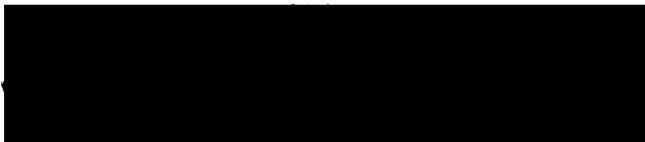
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: NOV 10 2005
EAC 03 192 53517

IN RE: Petitioner: [Redacted]

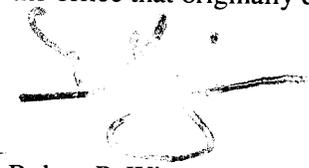
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



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 Trinidad 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 contained in the record, the petitioner's wed United States citizen [REDACTED] in Queens, New York on July 2, 1997. The petitioner's spouse filed a Form I-130 on the petitioner's behalf on July 31, 1997. The petitioner filed a Form I-485 application on that same date. The Form I-130 petition and the Form I-485 application were denied on May 7, 2003 for abandonment. The instant Form I-360 self-petition was filed by the petitioner on June 16, 2003. The petition was denied on March 24, 2005.

The petitioner, through counsel, submits a timely appeal dated April 22, 2005.

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 Secretary of Homeland Security 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.

Further, the regulation at 8 C.F.R. § 204.2(c)(2)(ix) states:

Good Faith Marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

With the initial filing, the petitioner submitted a copy of her spouse's birth certificate, her marriage certificate, her Illinois driver's license, photographs with her spouse, evidence related to her claim of abuse, and a copy of the petitioner's birth certificate. The petitioner also submitted documents already contained in the record related to the Form I-130 previously filed in her behalf.

The director found this evidence was not sufficient to establish eligibility. Accordingly, on June 3, 2004, the director requested the petitioner to submit additional evidence to support her claim that she entered the marriage in good faith. The director's notice stated:

1) Submit a statement, in your own words describing the relationship with your abuser, beginning with when you first met until present. Be as specific and detailed as possible.

As evidence that you married in good faith, you submitted photos. Photos, by themselves, do not bear enough weight to establish that you married your spouse in good faith. Therefore, please comply with the following:

2) Please show that you married your spouse in good faith. Submit as much of the following as possible:

1. Insurance policies in which you or your spouse is named as the beneficiary.
2. Bank statements, tax records and other documents that show you share accounts and other similar responsibilities.
3. Evidence of your courtship, wedding ceremony, residences, special events, etc.
4. Evidence of joint ownership or property (such as home, automobile, etc.)
5. Birth certificates of children born to you and your spouse.
6. Affidavits of friends and family who can provide specific information verifying your relationship with your spouse.

The petitioner, through counsel responded to the director's notice on July 26, 2004 and requested additional time to respond. The director granted the request for additional time on August 26, 2004. In accordance with section 204.1(h), the director indicated that the petitioner had an additional 60 days to respond to the request for evidence, to withdraw the petition, to request a decision based on the evidence submitted or to

request additional time to respond. The director noted that although additional time could be granted, the total time should not exceed 120 days. Finally, the director indicated that if the petitioner failed to respond within 60 days, a decision would be rendered based on the evidence previously submitted.

The petitioner, through counsel, responded on October 27, 2004. The petitioner again requested additional time to respond, indicating that although the petitioner has “a statement in [her] own words describing her relationship with her abuser, [she was] unable to contact friends . . . because they have been out of the country for several months” Counsel then states that because the petitioner “fled her husband” she had no time to gather documentation to support her petition and that there were no children born to the marriage and no jointly owned property.

The petitioner submitted no further documentation after the second request for additional time and the director denied the petition, finding that the petitioner failed to establish that she entered into the marriage in good faith.

On appeal, the petitioner submits her own personal statement as well as statements from friends. However, the petitioner’s failure to submit such documentation when specifically requested to do so by the director precludes the submission of the requested document on appeal as the regulations state 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. 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). We emphasize that the director’s request clearly indicated the specific documents to be submitted. If the petitioner had wanted the submitted evidence to be considered, she should have submitted it in response to the director’s request for evidence. *Id.* In the least, the petitioner could have submitted her personal statement in response to the director’s request for evidence. Accordingly, we will not accept or consider the evidence submitted on appeal.

Upon review, we find the evidence contained in the record at the time of the director’s decision was not sufficient to establish eligibility. The only documentation contained in the record to support a claim of a good faith marriage was photographs of the petitioner and her spouse. The photographs appear to show the petitioner and her spouse on their wedding day. There are no other photographs to document shared times between the petitioner and her spouse on other occasions despite the petitioner’s claim that she resided with her spouse for more than six months. Regardless, while the petitioner’s photographs are evidence that the petitioner and her spouse were together at a particular place and time, they do not establish that they were engaged in a bona fide marriage. The record remains absent any evidence to establish that the petitioner entered her marriage in good faith.

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