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FILE: [REDACTED]
EAC 04 137 51795

Office: VERMONT SERVICE CENTER

Date: NOV 10 2005

IN RE: Petitioner: [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.

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 the Philippines 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 record lacked sufficient evidence to make a determination as to the petitioner's eligibility.

The petitioner submits a timely appeal with some of the evidence the director requested in his request for additional evidence.

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 [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the lawful permanent resident 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 contained in the record, the petitioner wed lawful permanent resident, [REDACTED] in the Philippines on March 7, 1997. The petitioner indicates that she entered the United States on February 16, 2002 as a V-1 nonimmigrant. On March 29, 2004, the instant 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.

With her initial filing, the petitioner submitted a copy of her marriage certificate, a police clearance from the Philippines, a copy of the birth certificate for the petitioner's child with her spouse, the petitioner's sworn statement, two unsworn statements from acquaintances, copies of six photographs and medical documents.

The director found this evidence was not sufficient to establish eligibility. Accordingly, on April 20, 2004, the director requested the petitioner to submit additional evidence. The director requested the following evidence:

- Evidence of the petitioner's good moral character, to include police clearances from each place the petitioner lived for at least six months during the past three years.
- Evidence that the petitioner married her spouse in good faith.

On July 6, 2004, the petitioner responded to the director's request by requesting an extension of time in which to respond. On July 19, 2004, the petitioner submitted an affidavit attesting to her good moral character and a police clearance from the state of California's Department of Justice. The petitioner did not submit any evidence in response to the director's request for additional evidence of the petitioner's good faith marriage.

On October 27, 2004, the director made a second request for evidence. In the request, the petitioner was asked to provide evidence that she resided with her spouse, such as joint leases, mortgages, insurance policies, utility bills, bank statements, and affidavits of friends and family. The petitioner was also requested to provide further evidence of the claimed abuse, such as reports or affidavits from police, judges, medical or court officials, evidence that the petitioner sought refuge in a shelter for the abused, photographs, and a specific statement from the petitioner detailing the types of abuse suffered.

The petitioner did not respond to the director's second request for evidence and the director denied the petition finding that the evidence in the record did not contain sufficient evidence for the director to determine the petitioner's eligibility.

On appeal, the petitioner provides an affidavit describing the petitioner's "emotional upset" due to that fact that her husband "abandoned her and would not support her" and a psychological assessment. The regulation, however, 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 this instance, we emphasize that the director did not request some vague class of documentation, but rather specific documents, leaving no ambiguity as to what documents were required. 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.* Because the director gave the petitioner the opportunity to submit this evidence prior to the decision, the key question is not whether the evidence exists, but whether the petitioner submitted them when asked. The submission of the requested evidence on appeal does not overcome the petitioner's failure to submit the evidence when first requested to do so. Accordingly, we need not consider such evidence on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

We note that even if we considered the petitioner's appellate submission, the evidence does not establish her eligibility. First, the petitioner does not submit any documentation as requested to support her claim that she resided with her spouse. Second, the affidavit and psychological assessment do not detail any incidents of battery or extreme cruelty. The fact that the petitioner was "abandoned" by her spouse does not mean that she was subjected to extreme cruelty. ¹

Upon review of the record at the time of the director's decision, we concur with the findings of the director that the record contains insufficient evidence to establish that the petitioner resided with her spouse, and that she was battered by, or the subject of extreme cruelty perpetrated by, her spouse.

As indicated by the petitioner and the affidavits contained in the record, although she resided with her spouse in the Philippines prior to their marriage, at the time of the marriage, the petitioner's spouse was residing permanently in the United States. When the petitioner came to the United States in February of 2002, the petitioner's spouse was living with another woman with whom the petitioner's spouse had a child. While the petitioner's spouse initially indicated that he resided at the apartment the petitioner resided in, the petitioner states that her spouse spent little time there and "did not have many clothes in the closet or personal possessions in the apartment." The petitioner states that when she began to doubt her spouse's schedule she soon learned that "he was living with another woman."

As it relates to the petitioner's claim of abuse, the petitioner does not claim that she was battered or physically abused in any way. Rather, the petitioner claims that she was "emotionally devastated" when she found out that her spouse had chosen "the other woman over me." While the situation encountered by the petitioner is unfortunate, the facts as indicated by the petitioner are not sufficient to establish a claim of extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which 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

¹ We further note that although the assessment provided by Mr. [REDACTED] indicates that he currently has his "MPA [Master of Public Administration/Affairs]" and that he previously was "a medical social worker," there is no evidence to establish Mr. [REDACTED] qualifications to make such an assessment of the petitioner.

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

In this instance, the petitioner has failed to demonstrate that the treatment she received by her spouse during the marriage involved any overall pattern of violence, any act or threatened act of violence, or forceful detention, psychological or sexual abuse or exploitation.

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.