



U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

B9

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 29 2005  
EAC 04 119 54193

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:

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 (Director), Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a native and citizen of Poland who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The record reflects that the petitioner married United States citizen [REDACTED] on March 7, 1999 in Las Vegas, Nevada. The instant Form I-360 petition was filed by the petitioner on March 13, 2004. On October 12, 2004, the director requested further evidence to demonstrate the petitioner's claim of abuse, that he resided with his spouse, and that he is a person of good moral character. The petitioner responded to the request for evidence on December 16, 2004. The director denied the petition on January 7, 2005, after reviewing and discussing the evidence submitted by the petitioner. The director found the petitioner failed to establish that he resided with his spouse and that he is a person of good moral character. The petitioner filed a timely appeal, dated February 7, 2005.

On appeal, rather than identifying any specific error on the part of the director, the counsel attempts to explain the reason the petitioner lacks the required evidence. Counsel states that the director failed to "consider the extreme difficulty the self-petitioner had when he attempted to gather evidences for his petition, since he was expelled from the marital home by his abusive U.S. Citizen wife." Counsel then argues that approval of the petition is "critical to allow the self-petitioner to remain in the United States in order to access U.S. Courts, so that he may properly litigate the divorce and child custody case against the abusive spouse."

As it relates to the director's finding that the petitioner failed to establish that he resided with his spouse, counsel claims that "[a]ll the joint bills, photos and other evidences are currently with the wife in the marital home." While we do not dispute this statement, we note that if the petitioner were indeed a joint holder on bank accounts, tax documents or utility bills, he should be able to get copies of evidence which would show a shared address. Despite the petitioner's claim that he resided with his spouse for more than four years, on appeal, the petitioner submits a single bank statement and photographs. We note that the photographs, while demonstrating that the petitioner and his spouse were together at a particular place and time, do not establish that the petitioner actually resided with his spouse. Counsel also claims that the petitioner "has now obtained joint statements from his divorce attorney, to show he resided with the abusive wife during the period of 3/3/1999 – 8/24/2003." Despite this claim, however, the record contains no such statement from the petitioner's divorce attorney.

As it relates to the issue of the petitioner's good moral character counsel states:

[T]he self-petitioner went to the local police station to request [sic] his police clearance before the deadline stated on the Request for Evidence from the Service Center. Yet the police station never mailed out his clearance. The beneficiary has once again gone to the police station on February 1, 2005. He has gotten a receipt written by the Communications Supervisor of the police station.

However, the self-petitioner is still waiting for his police clearance record to be regenerated as of today. Attached please see a copy of the receipt written by the supervisor of the police station. The record will be submitted to your office as soon as it is received by the self-petitioner.

The record contains no further evidence of the petitioner's good moral character.

Regardless, even if the petitioner had submitted additional evidence on appeal to establish that he resided with his spouse and that he is a person of good moral character, in instances where 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. If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

In this instance, the petitioner has failed to specifically identify an erroneous conclusion of law or a statement of fact on the part of the director. The petitioner's general explanations for the lack of supporting documentation is not sufficient to meet the requirement of the regulation. Inasmuch as the petitioner has failed to specifically identify any erroneous conclusion of law or statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal.

**ORDER:** The appeal is dismissed.