

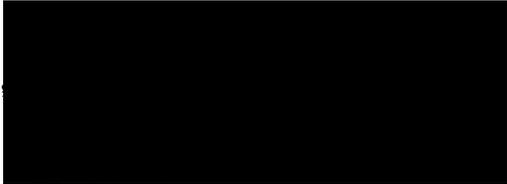
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 02 263 52703

Office: VERMONT SERVICE CENTER

Date: NOV 29 2005

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 on appeal. The appeal will be dismissed.

The petitioner seeks 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 in the record, the petitioner wed United States citizen [REDACTED] in Hempstead, New York on November 8, 2000. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on March 22, 2001. The petitioner filed a Form I-485 application on this same date. The Form I-130 petition was denied on January 23, 2002 for abandonment and the Form I-485 application was denied based upon the denial of the Form I-130 petition.

The petitioner filed the instant Form I-360 petition on August 9, 2002, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage. In a decision dated September 3, 2003, the director denied the petition finding that the petitioner failed to establish that he is a person of good moral character and that he entered into the marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

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.

At the time of filing, the petitioner submitted no evidence to establish that he is a person of good moral character or that he entered into his marriage in good faith. Accordingly, on March 11, 2003, the director requested additional evidence. To support the petitioner's claims, the director specifically requested the following:

Submit evidence of your good moral character. The following may be submitted:

1. Your own affidavit supported by police clearances . . . or records from each place you resided for at least 6 months during the 3-year period before filing this petition. If you have resided outside the United States during this 3-year period, you must submit police clearances from those locations
2. If police clearances, criminal background checks, or similar reports are not available for some or all locations, please submit an explanation and submit other evidence to support your affidavit. Evidence may include affidavits from responsible persons who can knowledgeably attest to your good moral character.

Please show that you married your spouse in good faith. You may submit one or more of the following:

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 responded to the director's request on April 4, 2003. As it relates to the petitioner's claim that he entered into his marriage in good faith, the petitioner submitted an illegible copy of a credit card, a telephone bill, and a copy of his marriage certificate. We note that even if the credit card account showed that the account was in both the petitioner's and his spouse's names, the petitioner failed to provide evidence of any activity on this account. Without documentation showing that the petitioner and his spouse jointly and actively used this account, the illegible photocopy carries little evidentiary weight of a good faith marriage. Similarly, the fact that the petitioner submitted a single phone bill in his spouse's name only is not sufficient evidence to establish the bona fide nature of his marriage. The fact that a legal marriage took place, as evidenced by the petitioner's marriage certificate, does not establish that the marriage was entered into in good faith. The petitioner did not submit any evidence to support his claim that he is a person of good moral character.

The director denied the petition after a review and discussion of the evidence submitted by the petitioner.

On appeal, counsel for the petitioner submits three affidavits which briefly discuss the petitioner's marriage with his spouse. The affidavits provide no specific details surrounding the petitioner's marriage or intent at the time of his marriage. Regardless, in instances where the 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 Obaighena*, 19 I&N Dec. 533 (BIA 1988). 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). 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, not on appeal. *Id.*

Counsel does not submit any evidence regarding the petitioner's good moral character. Instead, counsel states:

There is no evidence that the respondent is not a person of good moral character. Therefore, the respondent should not be prejudiced in his application for adjustment.

Counsel's argument is without merit. The burden falls on the petitioner to affirmatively establish that he is a person of good moral character, not on the Service to prove that he is not. Specifically, the regulation at 8 C.F.R. § 204.2(c)(2)(v) states, in pertinent part:

Good moral character. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition.

In this instance, the record lacks both an affidavit from the petitioner attesting to his moral character as well as police clearances from each location the petitioner resided during the three-year period prior to filing. The

petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. *See* 8 C.F.R. § 103.2(b)(2)(i). As the petitioner has failed to provide any statement or official documentation that establishes such police clearances or background checks are not available or cannot be obtained, the petitioner is presumed ineligible pursuant to 8 C.F.R. § 103.2(b)(2).

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.

ORDER: The appeal is dismissed.