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U.S. Citizenship
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Services

B9



FILE: [REDACTED]
EAC 03 160 52636

Office: VERMONT SERVICE CENTER

Date: **SEP 15 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:



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.

A handwritten signature in black ink, appearing to be "S. P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (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 Bangladesh 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 entered the United States on July 29, 2000 as a B-1 nonimmigrant with permission to remain in the United States until October 26, 2000. On November 30, 2000, the petitioner wed United States citizen [REDACTED] in Garfield, New Jersey. The petitioner was then placed in removal proceedings on April 25, 2003 as he remained in the United States beyond his period of authorized stay.

On April 28, 2003, 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, his U.S. citizen spouse during their marriage. On May 6, 2003, the director issued the petitioner notice that he had established a prima facie case for classification noting that the prima facie determination would expire on October 6, 2003.¹ Upon reviewing the evidence submitted at the time of filing, which included the petitioner's statement, two letters from the petitioner's spouse, and photographs, the director determined that the evidence was insufficient to establish eligibility and on April 22, 2004, requested the petitioner to submit further evidence to establish that he entered into the marriage with his citizen spouse in good faith. The director afforded the petitioner 60 days in which to respond to the request for evidence and indicated that the petitioner could request additional time to respond, not to exceed 120 days.

As the record did not contain any response from the petitioner within the allotted period, the director denied the petition on August 20, 2004, finding that there was insufficient evidence to support eligibility. *See* 8 C.F.R. § 204.1(h).

The petitioner, through counsel, files a timely appeal. On appeal, counsel claims that prior to the director's issuance of the denial, the petitioner requested additional time in which to respond to the director's request. Counsel provides a copy of a letter dated June 15, 2004 in which the petitioner requests a 45-day extension and a copy of a certified mail receipt. Additionally, counsel submits evidence related to the petitioner's claim of a bona fide marriage.

Upon review, we find the letter and certified mail receipt are insufficient to establish that the petitioner requested an extension prior to the issuance of the director's denial. Specifically, the certified mail receipt contains no postmark indicating that the letter was actually sent and the return receipt contains no signature or date to indicate that the letter was received by the director. Accordingly, such evidence does not support counsel's claim that the petitioner made "a formal request . . . for additional time to respond." The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

¹ The petitioner was granted three subsequent extensions of the prima facie determination on January 29, 2004, March 25, 2004, and June 8, 2004, until March 29, 2004, May 24, 2004, and August 7, 2004, respectively.

Given that the record contains no evidence to establish that the petitioner responded to the director's request for evidence by either requesting an extension of time or by submitting the requested documents, we cannot find that the director committed any procedural error, or any error of fact or law, in denying the petition based on the petitioner's failure to establish eligibility.

Accordingly, we will not accept the documents submitted by the petitioner on appeal to establish that he entered into his marriage in good faith. 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 Obaighena*, 19 I&N Dec. 533 (BIA 1988). 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. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence related to the petitioner's good faith marriage on appeal.

At the time of the director's decision, the record lacked sufficient evidence to establish that the petitioner entered into his marriage in good faith. Although the petitioner submitted his own statement, the statement provides few details about the petitioner's relationship with his spouse prior to their marriage such that it establishes the petitioner entered into the marriage in good faith. The two letters from the petitioner's spouse, which were written two years *after* the petitioner's marriage to his spouse, do not discuss their courtship or provide any specific information that relates to the petitioner's intent at the time of the marriage. Finally, although the petitioner submitted photographs of himself and his spouse, such evidence demonstrates only that the petitioner and his spouse were together at some particular place and time. They do not establish whether the marriage, at its inception and beyond, was a bona fide marriage.

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.