

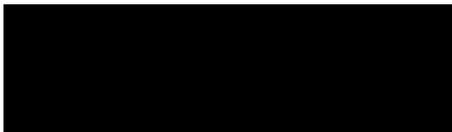
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U.S. Citizenship
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Services

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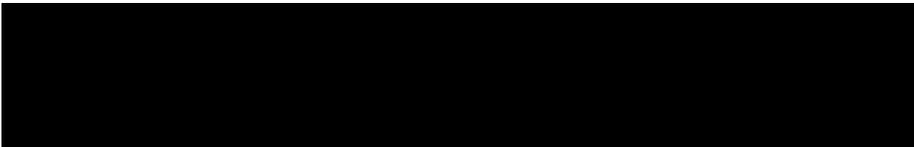
EAC 04 102 50162

Office: VERMONT SERVICE CENTER

Date: **JAN 18 2006**

IN RE:

Petitioner:



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:

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 Mexico 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 wed United States citizen [REDACTED], Texas on February 27, 2003. The petitioner filed the instant Form I-360 self-petition on February 20, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage. The director denied the petition on May 17, 2005, finding that the petitioner submitted insufficient evidence to establish eligibility.

The petitioner submits a timely appeal dated June 9, 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.

With the initial filing, the petitioner submitted three photographs as evidence of physical abuse, two letters from the Resource and Crisis Center as evidence that the petitioner was admitted to its shelter and counseling services, a letter from the [REDACTED] Texas police department indicating that [REDACTED] was arrested for assault causing bodily injury, a copy of the petitioner's protective order against her spouse, and copies of her marriage certificate, birth certificate, social security card, driver's license, spouse's birth certificate, and child's birth certificate.

The director found this evidence was not sufficient to establish the petitioner's eligibility and on September 30, 2004, requested the petitioner to submit additional evidence to establish that she is a person of good moral character. The request was improperly addressed and the director reissued the request on January 25, 2005. In the request, the petitioner stated:

As evidence of your good moral character, you have submitted a police clearance from the Dickinson Police Department in Texas. This name-based clearance searched the name [REDACTED] only.

Service records indicate you have used aliases, including the following:

[REDACTED]

Clearances are required for these aliases and all aliases used; otherwise, a fingerprint-based clearance is considered acceptable. In addition, the clearance you have provided indicates you were arrested for assault causing bodily injury/family violence on August 5, 2003. Additional documentation is requested.

• **Submit additional 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 note: if the police clearance is researched by name only, you must supply the law enforcement agency with all aliases you have used, including maiden and/or married name(s), if applicable.

- **Your submitted police clearance indicates that you have been arrested or charged with a crime, please submit the following:**
 1. **copies of the arrest report(s);**
 2. **copies of the court documents showing the final disposition of the charge(s); and**
 3. **relevant excerpts of law for that jurisdiction showing the maximum possible penalty for each charge.**

Please note that this Service is not precluded from considering good moral character prior to the 3-year period when such circumstances exist.

- **If you are unable to submit the documentation requested by the Service, please submit a statement explaining why this documentation is unavailable to you.**

[Emphasis in the original.]

The petitioner failed to respond to the director's request and the director denied the petition finding that the record did not contain sufficient evidence to establish eligibility.

On appeal, the petitioner submits a police clearance in the name of [REDACTED] from the County Clerk of Galveston, Texas, a new letter from the Resource and Crisis Center, and a copy the court's order to dismiss the charges against the petitioner for assault causing bodily injury. The petitioner also resubmitted a copy of the police clearance she submitted at the time of the initial filing. The petitioner fails to submit police clearances for all of her aliases or, in the alternative, a clearance based upon her fingerprints, as specifically requested by the director. Regardless, even if the petitioner had submitted the appropriate police clearance, the petitioner's failure to submit evidence regarding her arrest and the appropriate police clearance 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.* 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 that the petitioner was a person of good moral character. Specifically, the record lacked a police clearance for all aliases used by the petitioner or a clearance based upon her fingerprints. Moreover, the record lacked evidence related to the petitioner's August 5, 2003 arrest.

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