U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 13 2008
EAC 04 259 53220

IN RE: Petitioner: [redacted]

PETITION: Petition for Immigrant Abused 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:

[redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The April 4, 2007 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act) provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, incorporated here by reference, we will only repeat certain facts as necessary here. The director initially denied the petition on October 14, 2005, finding that the petitioner failed to provide sufficient evidence to establish his eligibility. On appeal, the AAO concurred with the findings of the director and specifically found that the petitioner failed to establish that he had a qualifying relationship as the spouse of a United States citizen, that he was eligible for immigrant classification based upon that relationship, that he resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse during their marriage, and that he entered into his marriage in good faith. However, the AAO remanded the case on July 24, 2006 because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Upon remand, the director issued a NOID on October 4, 2006 and afforded the petitioner the opportunity to submit further evidence to establish his marriage with a United States citizen, his claim of abuse, that he resided with his spouse, and that he entered into his marriage in good faith. The director also requested the petitioner to submit evidence of his good moral character. The petitioner timely responded to the director's NOID with additional evidence related to his claims of residence, abuse, and good faith marriage. Although the petitioner submitted a letter from the Hampstead, New York town clerk referencing the petitioner's marriage certificate, the petitioner did not submit a copy of his marriage certificate. In a decision dated April 4, 2007, the director found that the petitioner had established that he resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse, that he was a person of good moral character, and that he entered into his marriage in good faith. However, the director found that as the petitioner failed to submit a copy of his marriage certificate, he failed to establish that he had a qualifying relationship as the spouse of a United States citizen. The director certified his decision to the AAO for review and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision.

On certification, in a letter dated May 4, 2007, the petitioner states that the director's finding regarding the petitioner's failure to submit a marriage certificate was erroneous. Additionally, the petitioner now submits the requested copy of his marriage certificate. We will not accept the petitioner's submission of his marriage certificate at this time. 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 does not usually accept evidence that was not submitted when previously requested. The petitioner had been specifically notified of his failure to submit his marriage certificate in both the director's RFE and the AAO's remand decision and had been afforded multiple opportunities to provide this documentation. If he petitioner wanted the submitted evidence to be considered, he should have submitted the document in response to the director's RFE or in response to the director's NOID. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

As such, based upon the record as it was constituted before the director, we concur with the director's finding. The record did not contain sufficient evidence of the petitioner's marriage to a United States citizen. Accordingly, the petitioner failed to establish that he had a qualifying relationship as the spouse of a United States citizen and that he was eligible for immigrant classification based upon that relationship. The petitioner, therefore, is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

Accordingly, the April 4, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The April 4, 2007 decision of the director is affirmed.