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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **MAR 26 2008**  
EAC 05 195 51886

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.

*Maura Deadrick*  
for 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 matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification 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 an alien battered or subjected to extreme cruelty by a United States citizen.

Section 204(a)(1)(A)(iii) of 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 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 states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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].

In this case, the director initially denied the petition on January 24, 2006 for failure to meet any of the eligibility requirements. In its September 6, 2006 decision on appeal, the AAO determined that evidence in the petitioner's administrative file showed that she had a qualifying relationship with her U.S. citizen spouse and was eligible for immediate relative classification based on their relationship. The AAO concurred with the director's determination that the petitioner had not established her good-faith entry into the marriage, her residence with her husband, her good moral character and her husband's battery or extreme cruelty. The AAO nonetheless remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on December 6, 2006, which informed the petitioner, through counsel, that she had failed to establish the requisite joint residence, good moral character, good-faith entry into the marriage and battery or extreme cruelty. The petitioner, through counsel, responded to the NOID with additional evidence that the director found sufficient to establish the petitioner's good-faith entry into her marriage, her residence with her husband and her good moral character, but insufficient to establish that her husband subjected her to battery or extreme cruelty during their marriage. Accordingly, the director denied the petition on May 7, 2007 on this final ground and certified his decision to the AAO for review.

The pertinent facts and relevant evidence submitted below were discussed in our prior decision, incorporated here by reference. Hence, we will only address the relevant evidence submitted after that decision was issued. In response to the NOID, the petitioner submitted a letter dated February 1, 2007 from the former couple's landlord, a copy of a joint bank account statement dated August 5, 2003, a copy of the petitioner's health insurance enrollment application, six photocopied photographs of the petitioner and her husband, a copy of the airline ticket receipt for the petitioner's husband's visit to Vietnam to meet her, documentation of her husband's receipt of Supplemental Security Income, a clearance letter from the San Jose, California Police Department dated January 17, 2007, documentation of the petitioner's husband's conviction for assault with a deadly weapon on August 26, 2005 and copies of postmarked letters dated during the former couple's courtship. We concur with the director's determination that these documents, combined with the relevant evidence already in the record, demonstrate that the petitioner entered into marriage with her husband in good faith, resided with him and that she is a person of good moral character.

We also concur with the director's determination that the evidence submitted in response to the NOID does not establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. As noted in our prior decision, the petitioner's June 3, 2005 declaration was the only evidence submitted below to establish the requisite abuse and the petitioner's statements lacked detailed and probative information sufficient to establish her claim. The documentation of the petitioner's husband's conviction submitted in response to the NOID does not demonstrate that he subjected the petitioner to battery or extreme cruelty. The documents show that the victim of the crime was not the petitioner, but another individual, and the materials contain no indication that the petitioner was otherwise harmed or adversely affected by her husband's offense.

On certification, counsel submits three additional declarations from the petitioner, her roommate and her friend. Neither counsel nor the petitioner provides any explanation of why these statements were not submitted below. We note that the director first requested the petitioner to submit evidence of battery or extreme cruelty in the September 9, 2005 Request for Evidence (RFE) to which the petitioner did not respond. In his initial decision dated January 24, 2006, the director again notified the petitioner that she had not established her eligibility. In our prior decision, we discussed the petitioner's June 3, 2005 declaration and explained that it alone did not establish abuse. We specifically noted that the petitioner indicated that she confided in friends, but had not submitted corroborative statements from those friends. In the December 6, 2006 NOID, the director again notified the petitioner of the need for further evidence of battery or extreme cruelty. In sum, the petitioner was provided three opportunities over the course of an entire year to submit the evidence that she now provides for the first time on certification. We will not consider these declarations.

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 or certification. *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). The petitioner has provided no explanation and documentation of why the evidence submitted on certification was not available for submission below.

Accordingly, the AAO need not and will not consider the evidence submitted for the first time on certification. If the petitioner wishes the evidence to be considered, she may submit it with a new self-petition. *See Matter of Obaigbena*, 19 I&N Dec. at 537.

The May 7, 2007 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that her husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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. The petitioner has not sustained that burden.

**ORDER:** The director's decision of May 7, 2007 is affirmed. The petition is denied.