U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B7

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 0 3 2004
EAC 03 008 52477

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Acting 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 the Dominican Republic 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 director denied the petition, finding that the petitioner failed to establish that she has resided with the U.S. citizen spouse; is a person of good moral character; and entered into the marriage to the citizen in good faith.

On appeal, counsel for the petitioner submits additional evidence.

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 Attorney General 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.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

> *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

According to the evidence on the record, the petitioner wed United States citizen on July 27, 1994 in Bronx, New York. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The district director denied the Form I-130 petition, finding that the petitioner had failed to establish that the marriage was not entered into for the purpose of evading the immigration laws. The petitioner's spouse appealed the district director's decision to the Board of Immigration Appeals (BIA). The BIA dismissed the appeal on October 24, 2000. On October 4, 2002, the petitioner filed a Form I-360 self-petition 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 regulation at 8 C.F.R. § 204.2(c)(i) requires the petitioner to show that she has resided with her citizen spouse, is a person of good moral character; and entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she has resided with her spouse, is a person of good moral character and entered into the marriage in good faith, the director requested the petitioner to submit additional evidence. The director listed evidence the petitioner could submit to establish that she had resided with her spouse, that she married her spouse in good faith, and that she is a person of good moral character.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here.

On appeal, counsel for the petitioner submits evidence previously requested by the director.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

In review, the evidence is insufficient to establish that the petitioner resided with her citizen spouse. The record of proceeding before the director included the following evidence:

- The petitioner's statements.

- A notice of renewal of lease dated November 17, 1997, addressed to the petitioner and her husband at 14-16 York, that the petitioner and spouse signed and dated on July 1, 1999, almost two years after the date of the notice. The petitioner and her spouse failed to indicate on the notice whether they intended to renew or cancel the lease.

- A notice of renewal of lease addressed to the petitioner and her husband at 14-16 ndicating that the lease would commence on April 1, 1999 and end on March 31, 2000. The petitioner and her spouse signed and dated the notice on July 1, 1999. [1]

- An undated phone bill addressed to the petitioner's spouse alone at

- A New York state income tax refund dated May 28, 1997 addressed to both the petitioner and her spouse at ronx, New York.

It is noted that the petitioner indicated that she had resided with her spouse for a period of 8 years as of the date of the filing of the Form I-360 petition. The evidence is insufficient to establish that she resided with her spouse.

The director determined and the AAO concurs that the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H). The BIA upheld the district director's determination that the petitioner's husband had failed to establish that the marriage to the petitioner was a bona fide marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires that the petitioner establish that she is a person of good moral character. In a request for additional evidence, the director specifically requested that the petitioner submit police clearances or records from each place she had resided for at least six months during the 3-year period before filing the Form I-360 petition. The petitioner failed to submit the requested evidence and now submits it on appeal. The AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

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.

[1] A third renewal lease was submitted on appeal.