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20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship
and Immigration
Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 27 2005
EAC 03 213 53118

IN RE: Petitioner:
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:

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.

for 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 on appeal. The appeal will be dismissed.

The petitioner is a 52-year old female native and citizen of the Philippines 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 resided with her United States citizen spouse during the marriage, that she entered into her marriage with a United States citizen in good faith, that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and that she is a person of good moral character.

The petitioner submits a timely appeal.

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)(2)(ix) states:

> *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. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

According to the evidence on the record, the petitioner wed United States citizen in Las Vegas, Nevada on May 13, 2002. On July 14, 2003, a 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, her U.S. citizen spouse during their marriage. According to the Form I-360, the petitioner and his citizen wife resided together from March 2002 until or through September 2002.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the citizen in good faith.

Because the petitioner furnished insufficient evidence to establish that she resided with her United States citizen spouse during the marriage, that she entered into her marriage with a United States citizen in good faith, that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and that she is a person of good moral character, she was requested on June 23, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish each of these claims.

On August 14, 2004, the petitioner requested an extension of time, until October 22, 2004, in which to respond to the director's request for evidence. The director acknowledged the petitioner's extension request on September 21, 2004, noting that if the petitioner failed to respond the request for evidence, a decision would be rendered based upon the evidence previously submitted. The director's letter further stated:

> Pursuant to 8 C.F.R. § 204.1(h), you have 60 days to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. *An additional 60 days may be authorized. The total time shall not exceed 120 days.*

[Emphasis added.]

Despite the director's indication that the total time to respond to the director's request of June 23, 2004 was 120 days, on October 8, 2004, the petitioner requested a second extension of time, from September 21, 2004 to January 19, 2005 in which to respond. No further evidence was submitted.

After allowing the petitioner at least 120 days to respond to the request for evidence, the director denied the petition on December 14, 2004, after reviewing and discussing the evidence previously submitted into the record. The discussion will not be repeated here.

The petitioner submits a timely appeal with additional evidence.

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 Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it 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 submitted on appeal. Consequently, the appeal will be dismissed.

Based on the record before the director at the time of his decision, we concur with the director's finding that the petitioner failed to establish that she resided with her United States citizen spouse during the marriage, that she entered into her marriage with a United States citizen in good faith, that she has been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse, and that she is a person of good moral character.

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.