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

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U.S. Citizenship and Immigration Services

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JAN 18 2005

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 03 085 50172

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AA) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the People's Republic of China 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 had failed to respond to the director's request for additional evidence, hence, she could not make a determination as to the petitioner's eligibility for the benefit sought.

On appeal, counsel for the petitioner asserts that he never received the request for 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 record reflects that the petitioner entered the United States as a B-1 nonimmigrant visitor on September 14, 2001. She filed an asylum application on May 21, 2001 that was denied on July 16, 2001. On September 21, 2002, the petitioner wed U.S. citizen On January 17, 2003, 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 petitioner was placed into removal proceedings on January 29, 2003. The next hearing before an immigration judge is scheduled for February 2, 2005.

Because the petitioner furnished insufficient evidence to establish that her eligibility as the spouse of a citizen or permanent resident, that she had resided with her husband, that she entered into the marriage in good faith and had been abused by, or the subject of extreme cruelty perpetrated by, her citizen spouse, and that she is a person of good moral character, she was requested on November 3, 2003, to submit additional evidence. The petitioner was granted 60 days in which to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. Based on the petitioner's failure to respond, the director denied the petition.

On appeal, counsel for the petitioner asserts that he never received a request for additional evidence (RFE). It is noted that the RFE was properly addressed to the petitioner in care of her attorney of record at the address listed on the Form I-360 and Form G-28, Notice of Entry of Appearance. There is no evidence in the file indicating that the RFE was returned to the sender.

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.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(A) requires the petitioner to establish that she was married to a citizen of the United States as of the date of the filing of the petition. On the Form I-360 petition, the petitioner indicated that she had been married twice and that her citizen spouse had been married three times. The petitioner submitted a copy of a marriage certificate indicating that she wed U.S. citizen Lloyd Saunders III but she failed to provide any evidence of the termination of all prior marriages of the parties. The evidence is insufficient to establish that the petitioner was the spouse of a citizen.

The director determined that the petitioner had failed to submit sufficient evidence to establish that she had resided with her citizen spouse during the marriage. The AAO concurs. The petitioner failed to provide any relevant evidence with her initial petition.

The director determined that the petitioner had failed to establish that she had been battered by, or the subject of extreme cruelty perpetrated by, the citizen spouse. The evidence consists of the following: a copy of the petitioner's letter dated November 25, 2002 addressed to her spouse in which she states, "in the past two months, you tortured me a lot physically and spiritually. You often went to live with your ex-wife. You insulted me, you lied to me," and a statement dated October 23, 2002, ostensibly signed by the petitioner's spouse in which he promises to never use physical force against his wife again. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner failed to submit any evidence of her good moral character as required by the regulations. For this additional reason, the petition may not be approved.

Finally, the petitioner failed to establish that she entered into the marriage in good faith and resided with her spouse. The record contains scant information about the petitioner and her husband's courtship. She provided no evidence in the form of a joint lease or mortgage agreement. She did not provide copies of insurance policies listing a common address for the petitioner and her spouse, or listing one as the beneficiary of such a policy. She failed to provide utility bills listing a common address for the petitioner and her spouse or showing that they shared financial responsibilities. She provided no bank statements or tax records listing a common address for the petitioner and her spouse or that they shared joint assets.

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.