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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 16 2005  
EAC 04 017 50496

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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, 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 32-year old female native and citizen of Poland who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director denied the petition, finding that because of the lack of evidence in the record, a determination as to the petitioner's eligibility could not be made.

The petitioner, through counsel, submits a timely appeal and indicates that he needs 60 days to submit a brief and/or evidence. We note that this extension can only be granted if the petitioner shows good cause. The petitioner has failed to demonstrate the good cause necessary to be entitled to such an extension. Regardless, to date, nearly five months after the filing of the petition, the record contains no further submission from the petitioner. We, therefore, consider the record to be complete as it now stands.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States, 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.

According to the evidence on the record, the petitioner wed lawful permanent resident [REDACTED] in Garfield, New Jersey on March 4, 1997. On October 18, 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 lawful permanent resident spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish her eligibility, she was requested on August 18, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish that she resided with her lawful permanent resident spouse during the marriage, that she entered into her marriage in good faith, that she has been battered or the subject of extreme cruelty perpetrated by permanent resident spouse, and that she is a person of good moral character. The director also specifically requested the petitioner to submit a statement describing the abuse and a copy of her daughter's birth certificate.

The record does not contain a response from the petitioner to the director's request for evidence.

The director denied the petition on December 20, 2004, finding that as the petitioner failed to respond to the director's request for evidence, a determination as to eligibility could not be made. At the time of the director's decision, the evidence contained in the record consisted of:

- The petitioner's marriage certificate.
- Court documents related to the petitioner's abuse allegations against her spouse and temporary custody documents.
- Court documents related to the petitioner's spouse.

On appeal, petitioner's counsel states:

Most of the documentation was already submitted to your office but I need additional 60 days to submit the remainder which we are trying to obtain at the present time.

To date, five months after the filing of the petition, no further documentation has been submitted.

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).

In his request for further evidence, the director noted the deficiencies in the record and specifically listed the evidence to be submitted to support the petitioner's claims. 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). The petitioner's statement, through counsel, that she is in the process of gathering additional evidence is immaterial. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *Id.*

A review of the record before the director at the time of his decision reflects that the evidence was insufficient to establish the petitioner's eligibility.

The petitioner's appellate statement does not overcome this finding.

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.