U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 28 2005
EAC 03 136 51937

IN RE: Petitioner:
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 Acting Director (Director), Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be summarily dismissed.

The petitioner is a native and citizen of Ecuador 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 the evidence contained in the record did not establish eligibility.

The petitioner, through counsel, files a timely appeal.

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 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 in the United States 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 instant self-petition was filed by the petitioner on February 18, 2003 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 director determined the petitioner furnished insufficient evidence to establish the termination of her prior marriage, and therefore, that she had a qualifying relationship with her permanent resident spouse, the director requested the petitioner to submit additional evidence on January 7, 2004, including a copy of the petitioner's son's birth certificate. In addition to requesting evidence to establish that she married her spouse in good faith and that she has been subjected to battery and extreme mental cruelty, the director also specifically requested the petitioner to:

> Submit proof of the legal termination of [the petitioner's] prior marriage. Such proof would normally be a divorce decree, death certificate, annulment, etc. In order for the legal termination of marriage to be considered valid for immigration purposes, it must have been registered with a civil authority.

The petitioner responded to the director's request on May 19, 2004 by providing the following documents:

- A copy of the petitioner's birth certificate with accompanying translation.
- A copy of the petitioner's employment authorization card and social security card.
- A copy of the petitioner's marriage certificate to her permanent resident spouse.
- A copy of various bills, receipts, and account statements issued to the petitioner and her permanent resident spouse.
- Copies of court documents and police records related to the abuse suffered by the petitioner.

The petitioner did not submit a copy of her son's birth certificate or evidence of the legal termination of her previous marriage as requested by the director. Accordingly, the director denied the petition finding that there was insufficient evidence to support eligibility. *See* 8 C.F.R. § 204.1(h).

Counsel states the following as the reason for the appeal:

> Applicant through Counsel moves to the U.S. Citizenship and Immigration Services (the Service) to reopen and reconsider, Applicants application, a Petition for [Amerasian], Widow or Special Immigrant (Form I-360).
>
> A brief and/or evidence [will] be submitted to the [AAO] within 60 days.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Counsel does not elaborate on her statement and fails to specifically identify how the director's findings are incorrect or based upon an erroneous conclusion of law. Although counsel indicated that a brief would be submitted within 60 days, counsel did not explain why the brief would be submitted late or otherwise provide good cause for granting an extension beyond thirty days. As of this date, the record does not contain a supplemental appellate brief. Regardless, pursuant to 8 C.F.R. § 103.3(a)(2)(vii), counsel's request for additional time to submit a brief is denied as a matter of discretion for failure to show good cause.

Moreover, even if counsel had submitted a brief and/or additional evidence on appeal, 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, she should have submitted the documents in response to the director's request for evidence. *Id.* Accordingly, even if the petitioner had submitted the additional documents as indicated, under the circumstances, the AAO would not consider the sufficiency of the evidence submitted on appeal.

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.

ORDER: The appeal is dismissed.