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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
EAC 03 176 53921

Office: VERMONT SERVICE CENTER

Date: MAY 20 2005

IN RE: - Petitioner: [Redacted]
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:

[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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 44-year old native and citizen of Vietnam 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.

According to the evidence on the record, the petitioner wed United States citizen [REDACTED] on October 26, 2001 in Ho Chi Minh City, Vietnam. The petitioner filed a Form I-360 on May 22, 2003, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse. The Form I-360 petition indicates that the petitioner and her spouse separated on October 29, 2002

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 the marriage to the citizen in good faith, and that she is a person of good moral character.

The petitioner, through counsel, files 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 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;

* * *

(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.

Because the petitioner furnished insufficient evidence to establish her eligibility, she was requested on May 6, 2004, to submit additional evidence. The director listed evidence the petitioner could submit to establish that she resided with her citizen spouse during the marriage, that she entered into her marriage in good faith, and that she is a person of good moral character.

The evidence in the record relating to the issues of joint residence and a bona fide marriage consisted of the following:

- Affidavits from the petitioner's friends and relatives.
- Undated, uncaptioned photographs of the petitioner and her spouse.
- The petitioner's statement.
- The petitioner's marriage certificate.

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

On appeal, the petitioner, through counsel, asserts that the petitioner meets all of the eligibility requirements. As evidence that the petitioner entered the marriage in good faith and that she resided with her citizen spouse, counsel refers to the affidavits contained in the record and correspondence submitted on appeal.

We do not find the affidavits support a finding that the petitioner entered into the marriage in good faith or that she resided with her husband. The affiants indicate that they were aware of the petitioner's marriage. We do not dispute that a marriage took place. However, the fact that a legal marriage took place does not establish that the marriage was entered into in good faith.

indicates that she visited the petitioner, her daughter, and husband at the petitioner's husband's residence in California "for about one hour." The second affidavit, submitted by the petitioner's

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aunt, indicates that “around the last weekend of September 2002, [she] came to visit” the petitioner and her husband. A third affidavit, submitted by ██████████ a friend of the petitioner’s, indicates that she also visited the petitioner at her spouse’s home during the last week of September 2002 and that she was “greeted by [the petitioner], her new husband . . . and [the petitioner’s] children.” The remaining affidavit, submitted by ██████████ does not indicate that Ms. ██████████ ever witnessed the petitioner and her spouse residing together, but states, that as “a friend who talked to them regularly, I knew that they intended to live as husband and wife after the marriage.” Given that none of the affiants claims to have visited the petitioner on more than one occasion, and for no more than “about one hour,” the affidavits are not convincing evidence that the petitioner’s marriage was entered into in good faith or that the petitioner actually resided with her spouse.

Although the petitioner submitted envelopes showing that the petitioner and her citizen spouse received two pieces of mail at the same address in December 2002 and January 2003, respectively, the petitioner has not provided any further documentary evidence of her good faith marriage to her spouse or that she resided with him. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). We note that the according to the petition for dissolution of marriage filed by the petitioner, the petitioner had already separated from her husband at the time the correspondence was received. Accordingly, we are unable to consider these envelopes to establish that the petitioner and her citizen spouse were residing together during the time claimed by the petitioner on the Form I-360.

The petitioner failed to submit insurance policies in which she or her spouse is named as the beneficiary. She failed to submit bank statements, tax records and other documents that show she shared accounts and other responsibilities with her spouse. She failed to submit evidence of joint ownership of property. No children were born of the marriage. The affidavits provided contain scant information about the petitioner and her husband’s courtship and married life. The record has not established a commingling of funds and assets or joint financial liabilities, or other objective evidence to indicate that the petitioner and her husband intended to establish a life together.

As it relates to the issue of the petitioner’s good moral character, the petitioner submits a copy of her manicurist’s license, a letter from her employer, and a letter from the State of California’s Department of Justice indicating that it has no “criminal history record” related to the petitioner. We note that while such evidence is sufficient to establish the petitioner’s good moral character, 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 her 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). If the petitioner had wanted the evidence related to her good moral character to be considered, she should have submitted the documents in response to the director’s request for evidence. *Id.*

Even if we were able to accept the evidence submitted on appeal related to the petitioner's good moral character, the record is insufficient to establish that the petitioner entered her marriage in good faith and that she resided with her husband.

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.