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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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 1 0 2005
EAC 04 002 53538

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:

[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 dismissed.

The petitioner is a 43-year old native of Peru who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

According to the evidence in the record, the petitioner wed her United States citizen spouse on January 6, 2003, in Passaic, New Jersey. On October 1, 2003, the instant 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 United States citizen spouse during their marriage. In a decision dated November 16, 2004, the director denied the petition, finding that the petitioner failed to establish that she is a person of good moral character and that she entered the marriage in good faith.

The petitioner, through counsel, 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 [Secretary of Homeland Security] 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.

At the time of filing, the petitioner submitted insufficient evidence to establish eligibility. Accordingly, on July 29, 2004, the director requested additional evidence regarding the petitioner's spouse's citizenship, the petitioner's marriage certificate, whether the petitioner resided with her spouse and married him in good faith, the petitioner's claimed abuse, and the petitioner's good moral character. As it relates to the petitioner's good moral character, the director specifically stated:

> You have not submitted documentation to establish that you are a person of good moral character. The following may be submitted:
>
> 1. Your own affidavit supported by police clearances . . . or records from each place you resided for at least 6 months during the 3-year period before filing this petition. If you have resided outside the United States during this 3-year period, you must submit police clearances from those locations.
>
> 2. If police clearances, criminal background checks, or similar reports are not available for some or all locations, please submit an explanation and submit other evidence to support your affidavit. Evidence may include affidavits from responsible persons who can knowledgeably attest to your good moral character.
>
> * * *
>
> Please note: if the police clearance is researched by name only, you must supply the law enforcement agency with all aliases you have used, including maiden and/or married name(s), if applicable.

[Emphasis in the original.]

The petitioner responded to the director's request on September 24, 2004 by submitting the following documentation:

- A sworn statement from a friend of the petitioner's.
- An unsworn statement from the petitioner's sister.[1]

[1] The space provided for the signature of a notary is not dated or signed.

- A copy of the petitioner's marriage license and certificate.
- Letter from the City of Passaic Department of Human Services indicating the petitioner received counseling and attends its domestic violence program.
- A police clearance showing that a name check was conducted for "Maria L. Rueda," by the Passaic, New Jersey police department.
- A police clearance showing that a name check was conducted for "Maria L. Rueda," by the City of Clifton, New Jersey police department.
- Copies of two cards and a letter from the petitioner's spouse to the petitioner.
- Copies of undated, uncaptioned photographs, some of which include the petitioner and her spouse.
- A copy of the petitioner's spouse's birth certificate.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner. The discussion will not be repeated here. On appeal, as it relates to the issue of whether the petitioner entered her marriage in good faith, the petitioner submits a letter explaining the lack of joint documentation, a letter from the petitioner's spouse, and a new statement from [redacted] We find this evidence is not sufficient to overcome the director's determination regarding whether the petitioner entered her marriage in good faith.

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.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence related to the petitioner's good moral character submitted on appeal.

Even if the petitioner's appellate submission were considered it would not overcome the director's findings. First, the letter from the petitioner's husband in which he claims that he married the petitioner because he loved her, does not establish that the petitioner entered into the marriage in good faith. We note that like the letter submitted by the petitioner, the petitioner's husband's letter does not provide any specific details about their courtship or relationship together after the marriage.

Further, we note the absence of any documentation to establish the commingling of assets and/or liabilities such as insurance policies in which the petitioner or her spouse is named as the beneficiary, bank statements or other documents that show the joint use and access of both parties, or the joint ownership or lease of property or automobiles. The petitioner's attempt to explain the lack of evidence of the commingling of assets is not persuasive. She states that many of the accounts were already in her husband's name and that they would "worry about having joint accounts . . . in the future when they were settled down." Her explanation does not provide for the lack documentation of joint necessities, such as joint health insurance or

evidence that she was also listed as a driver on her husband's car insurance policy. Although the petitioner submits her own statement and a statement from her husband, these general statements cannot take the place of documentary evidence of the petitioner's good faith marriage.

The remaining issue is whether the petitioner has established that she is a person of good moral character. Concurrent with the filing of the appeal, the petitioner submits a police clearance from the police department in Clifton, New Jersey and Passaic, New Jersey reflecting that a name search was conducted based upon the petitioner's alias of ' Counsel contends that the petitioner's failure to submit the police clearances, as requested by the director, was "harmless error." We do not agree. As previously cited, the regulation requires the petitioner to submit additional evidence requested by the director. In this instance, the director specifically indicated to the petitioner that police clearances, if based on a name check only, must include all names used, *including maiden and/or married names.* We emphasize that the director did not request some vague class of documentation, but rather specific documents, leaving no ambiguity as to what documents were required. 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.*

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.