



U.S. Citizenship
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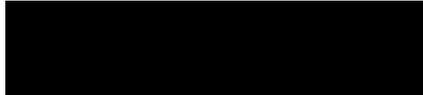
Office: VERMONT SERVICE CENTER

Date:

DEC 05 2005

IN RE:

Petitioner:



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:



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 (Director), Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a native and citizen of Colombia 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 record reflects that the petitioner married United States citizen [REDACTED] on August 15, 1997 in Queens, New York. The petitioner's spouse filed a Form I-130 petition in his behalf on November 8, 1997. The Form I-130 petition was approved on April 20, 1998. The petitioner filed a Form I-485 application on April 30, 2001.

The instant Form I-360 petition was filed by the petitioner on August 23, 2003. On July 16, 2004, the director requested further evidence to demonstrate the petitioner's claim of abuse, that the petitioner resided with his spouse, and that he entered into the marriage in good faith. The petitioner responded to the request for evidence on September 16, 2004 and requested an additional 60 days in order to gather additional evidence. On December 8, 2004, the director granted the petitioner's request for additional time. On February 10, 2005, the petitioner provided additional evidence. The director denied the petition on March 30, 2005 after reviewing and discussing the evidence submitted by the petitioner. The director found the petitioner failed to establish that he has been battered or subjected to extreme cruelty by his citizen spouse.

The petitioner, through counsel, filed a timely appeal, dated May 2, 2005. In support of the appeal, the petitioner submits an unsworn statement and copies of documents that were previously submitted. Rather than identifying any specific error on the part of the director as the reason for the appeal, counsel requests that the appeal be accepted for "humanitarian reasons." Counsel also states that he "is positive that the previous documents and the attached affidavit will be enough evidence in support" of the petition. Counsel does not elaborate on his statement or point to specific evidence to support his assertion that the record contains "enough evidence" to support a finding of eligibility or that the appeal should be approved based upon "humanitarian reasons." The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Counsel's general statements are not sufficient to meet the requirement of the regulation.

As it relates to the unsworn statement submitted on appeal, we note that in instances where 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. If the petitioner had wanted his statement to be considered, he should have submitted it, with the appropriate translation,¹ in response to the director's request for evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

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

¹ The regulation at 8 C.F.R. § 103.2(b)(3) requires any document containing foreign language to be accompanied by a full English language translation by a competent translator who has certified that the translation is complete and accurate.

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.

In this instance, the petitioner has failed to specifically identify an erroneous conclusion of law or statement of fact on the part of the director. Accordingly, the regulations mandate the summary dismissal of the appeal.

ORDER: The appeal is dismissed.