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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JUN 28 2005**
EAC 03 196 52551

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:

SELF-REPRESENTED

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico 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 or, in the alternative, pursuant to section 204(a)(1)(B)(ii) of 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.

On appeal, the petitioner submits some of the evidence that was previously requested by the director.

Sections 204(a)(1)(A)(iii) and (B)(ii) of the Act provides, respectively, that an alien who is the spouse of a United States citizen or lawful permanent resident, 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 regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to establish that she the is the spouse of a citizen or lawful permanent resident of the United States, that she has resided with the citizen or lawful permanent resident spouse, that she married her spouse in good faith, and that she is a person of good moral character.

In support of the petition, the petitioner submitted:

- Copies of police reports dated June 17, 1996 and April 23, 1999, respectively.
- A copy of the petitioner's marriage certificate.
- Two, untranslated documents.
- A copy of the petitioner's divorce decree.

The director determined that this evidence was insufficient to establish that the petitioner is the spouse of a citizen or lawful permanent resident of the United States, that she has resided with the citizen or lawful permanent resident spouse, that she married her spouse in good faith, and that she is a person of good moral character. Accordingly, on May 13, 2004, the director requested the petitioner to submit additional evidence. The director listed the evidence the petitioner could submit to establish each of the above referenced claims.

Specifically, the director requested:

- Evidence of the petitioner's spouse's permanent resident status, such as his green card, passport, alien registration number, or date and place of entry in the United States.
- Evidence that the petitioner resided with her spouse and that she entered into the marriage in good faith, such as insurance policies listing a common address, joint ownership, leases, mortgages or rental agreements, utility invoices, banks statements, tax records or other financial documents, affidavits of friends and family, evidence of the courtship, wedding ceremony, and any birth certificate for children born of the marriage.
- Evidence related to the petitioner's good moral character in the form of police clearances from every place the petitioner resided for at least 6 months during the three-year period prior to filing.

The petitioner did not respond to the director's request and the director denied the petition on September 30, 2004, finding that there was insufficient evidence to support eligibility. *See* 8 C.F.R. § 204.1(h).

On appeal, the petitioner submits copies of documents previously submitted as well as additional evidence. Although the petitioner's appellate submission appears to relate to the issue of her good moral character and her

good faith marriage, we must note that no evidence has been submitted related to the immigration status of her spouse. Instead, the petitioner states:

Only thing I know about his legal status was the fact that he could go to Mexico and come back any time and I do not have any other information except those identity informations [sic] or documents enclosed.

Regardless of the evidence submitted 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, the AAO will 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.