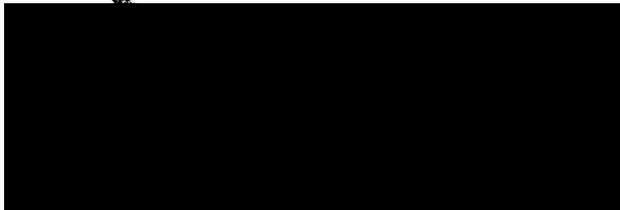




U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



B9

FILE: [REDACTED]  
EAC 03 232 50507

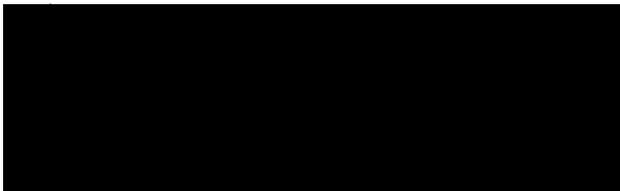
Office: VERMONT SERVICE CENTER

Date: NOV 21 2005

IN RE: Petitioner: [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:



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 Director, Vermont Service Center, denied the preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of South Korea who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if he or she demonstrates that the marriage to the United States citizen spouse was entered into in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II), 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The petitioner in this case initially submitted evidence including her Korean birth record, her husband's birth certificate, their marriage license and certificate, a subpoena issued to the petitioner to testify in criminal proceedings against her husband in the Denver Colorado County Court, a permanent civil restraining order against the petitioner's husband for her protection, an affidavit for a dissolution of marriage decree signed by the petitioner's husband but not the petitioner, a copy of the petitioner's 2001 federal income tax return submitted as married filing separately and listing her husband, and two bills addressed to the petitioner. The director found this evidence insufficient to establish that the petitioner entered into her marriage with her U.S. citizen husband in good faith, that she resided with him and that she was a person of good moral character. Accordingly, the director issued a Request for Evidence (RFE) on February 3, 2005. On April 1, 2005, Citizenship and Immigration Services (CIS) received counsel's response to the February 3, 2005 RFE in which counsel requested an additional 60 days to respond. Having received no further response from counsel, the director denied the petition on June 16, 2005 based on the evidence previously submitted.

On April 27, 2005, CIS received a Form G-28 Notice of Entry of Appearance as Attorney from The Denver Center for Crime Victims and signed by the petitioner. However, the petitioner herself filed the Form I-290B on which she states:

On April, 2005 Me and Immigration Specialist [REDACTED] Submitted a request for more time to respond to the Request for evidence but it was not granted because the period allowed for extension requests in my case had run out. Therefore, the evidence we submitted on April, 22, 2005 was not accepted by USCIS because the deadline of April 3, 2005 had passed. (Capitalization and punctuation as in original.)

The petitioner's appeal was received by CIS on July 13, 2005. In a letter dated July 18, 2005, counsel states, "We filed the Response to the Request for Evidence on April 22, 2005 as an interfiling but did not hear anything back until we received the Denial Notice of June 16, 2005." Counsel further states, "In our last submission of evidence responding to your Request for Evidence, we included evidence of the Petitioner's good faith marriage, good moral character, and abuse suffered at the hands of her former husband." The record contains no evidence submitted by the petitioner after her initial filing. On appeal, counsel submits no copies of the evidence allegedly submitted on April 22, 2005 and no mailing receipt, delivery confirmation or other documentation that the evidence was delivered to CIS on or near that date. Moreover, counsel states that the

materials purportedly sent on April 22, 2005 included evidence of abuse although the director never requested such evidence in the RFE. The RFE only requested additional evidence of the petitioner's good faith marriage, residence with her spouse and her own good moral character.

The regulation at 8 C.F.R. § 204.1(h) states:

*Requests for additional documentation.* When the Service determines that the evidence is not sufficient, an explanation of the deficiency will be provided and additional evidence will be requested. The petitioner will be given 60 days to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. If the director determines that the initial 60-day period is insufficient to permit the presentation of additional documents, the director may provide an additional 60 days for the submission. The total time shall not exceed 120 days, unless unusual circumstances exist. Failure to respond to a request for additional evidence will result in a decision based on the evidence previously submitted.

In this case, the director issued an RFE on February 3, 2005. The RFE explained the deficiency of the evidence submitted with the petition and requested additional evidence to establish that the petitioner entered into her marriage with her U.S. citizen husband in good faith, resided with him and that she was a person of good moral character. On April 1, 2005, CIS received a letter from counsel requesting an additional 60 days to respond to this RFE. As of June 16, 2005, over 120 days after the RFE was issued, CIS had received nothing further from counsel or the petitioner and denied the petition based on the evidence previously submitted in accordance with the regulation at 8 C.F.R. § 204.1(h). We affirm the director's decision that the evidence submitted with the petition does not establish that the petitioner entered into her marriage in good faith, resided with her husband, or that she is a person of good moral character. She is thus statutorily ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii) and her petition must therefore be denied.

The burden of proof in visa petition 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. This decision is rendered without prejudice to the filing of a new petition under section 204(a)(1)(A)(iii) of the Act with the necessary supporting evidence and the required fee or a documented request for a fee waiver.

**ORDER:** The appeal is dismissed.