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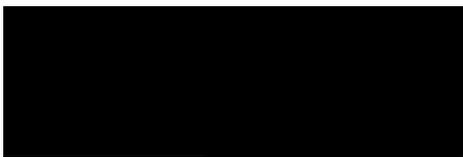
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Room A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
EAC 04 047 52709

Office: VERMONT SERVICE CENTER

Date: MAY 17 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:

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

The petitioner is a native and citizen of the Dominican Republic 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 director denied the petition, finding that the evidence contained in the record did not establish eligibility.

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

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 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 record reflects that the petitioner's spouse filed a Form I-130 on the petitioner's behalf on November 19, 1999 and then withdrew the petition on July 10, 2002. On December 10, 2002, the petitioner was placed in removal proceedings. On December 5, 2003, the petitioner then filed a Form I-360 self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) requires the petitioner to establish that he the is the spouse of a citizen or lawful permanent resident of the United States, that he has resided with the citizen or lawful permanent resident spouse, and that he 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, and is a person of good moral character.

Because the director determined the petitioner furnished insufficient evidence to establish that he is the spouse of a citizen, that he has resided with the citizen, and that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen during the marriage, the director requested the petitioner to submit additional evidence on August 27, 2004. The director listed evidence the petitioner could submit to establish each of these claims.

The petitioner did not respond to the director's request and the director denied the petition on December 22, 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 or contained in the record and the following additional documents:

- A "Good Conduct Certificate" from the City of New York Police Department.
- An initial and supplemental report from a licensed psychotherapist.
- A letter dated July 17, 2003, signed by [REDACTED] and [REDACTED]
- The petitioner's green card.
- Statement and driver's license from [REDACTED] and [REDACTED]
- The petitioner's employment authorization card and social security card.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

We note that at the time of filing, the record contained a copy of the petitioner's spouse's birth certificate issued by the city of New York, evidence of a joint bank account, bills, and taxes.¹ Accordingly, the portion of the director's request for evidence and denial based on the lack of evidence related to the petitioner's spouse's citizenship and joint residence was in error.

However, the director's request for evidence correctly indicated that the record lacked evidence of the petitioner's good moral character and evidence that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen during the marriage. If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence, not on appeal. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

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.

¹ This evidence appears to have been submitted in support of the Form I-130 filed in the petitioner's behalf by his citizen spouse.