U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

B9

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] OFFICE: VERMONT SERVICE CENTER DATE:
EAC 02 02228 53705

MAY 17 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

PUBLIC COPY

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center on October 14, 2003. The petitioner appealed the director's denial to the Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The appeal will be rejected.

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.

On April 9, 2003, the director requested additional evidence from the petitioner in a Notice of Intent to Deny the Petition, and granted the petitioner sixty days in which to respond. The Notice of Intent to Deny the Petition was sent to the petitioner at the address listed on the Form I-360 application. The petitioner failed to respond to the notice and request; hence the director denied the petition six months later. On appeal, the petitioner submits additional evidence. The petitioner was put on notice of the required evidence and was 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. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The regulation at 8 C.F.R. § 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(15) provides that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. § 103.5.

As the director denied the petition due to abandonment, the decision was not properly appealed and must be rejected.

ORDER: The appeal is rejected.