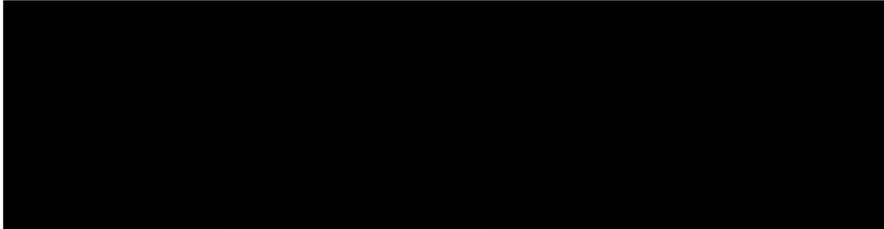




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

B9



FILE:

EAC 06 018 51735

Office: VERMONT SERVICE CENTER

Date:

JUL 03 2007

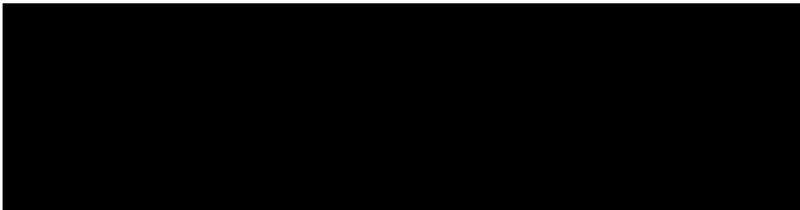
IN RE:

Petitioner:



PETITION: Petition for 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:



LETTER TO YOU

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.

Maura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner seeks immigrant classification under 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 battered or subjected to extreme cruelty by a United States citizen.

The director determined that the petitioner did not establish that she entered into marriage with her husband in good faith.

On appeal, counsel submits a brief and additional evidence.

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 the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of 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 abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Bolivia who entered the United States on April 20, 2000 as a nonimmigrant visitor (B-2). On April 30, 2001, the petitioner married J-S-¹, a U.S. citizen, in Miami. On October 15, 2002, J-S- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On April 12, 2004, the Miami District Director denied the Form I-130 due to abandonment and also denied the petitioner's concurrently filed Form I-485, Application to Adjust Status. On December 20, 2004, the petitioner and her son were served with Notices to Appear in removal proceedings. The petitioner and her son remain in proceedings before the Miami Immigration Court and their next hearing is scheduled for July 11, 2007.

The petitioner filed this Form I-360 on October 19, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into marriage with her husband. The petitioner, through counsel, timely responded to the RFE with additional evidence. On August 23, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good-faith entry into the marriage. The petitioner, through counsel, timely responded to the NOID with additional evidence. The director denied the petition on December 5, 2006 for lack of the requisite good-faith entry into the marriage and counsel timely appealed.

On appeal, counsel claims that the director did not address all the relevant evidence submitted below, failed to give proper weight to other evidence, and improperly accorded greater weight to primary evidence that did not exist or was unavailable to the petitioner. We agree that the director improperly cited the petitioner's failure to provide certain evidence or an explanation for the unavailability of such evidence when the record already contained relevant evidence and also indicated that other primary evidence was unavailable to the petitioner given the circumstances of

¹ Name withheld to protect individual's identity.

her abusive marriage. We find that with the evidence submitted below, combined with the additional evidence submitted on appeal, the petitioner has demonstrated that she entered into her marriage in good faith. Accordingly, the appeal will be sustained, the decision of the director will be withdrawn and the petition will be granted.

Entry into the Marriage in Good Faith

The petitioner submitted the following evidence relevant to her good-faith entry into marriage with her husband:

Testimony

- The petitioner's October 14, 2005 and May 18, 2006 affidavits submitted below and her December 19, 2006 affidavit submitted on appeal;
- October 14, 2005 and May 18, 2006 affidavits and October 15, 2006 letter of the petitioner's cousin [REDACTED];
- October 14, 2005 affidavit of the petitioner's former neighbor, [REDACTED];
- Letter of [REDACTED] the son of the petitioner's cousin, [REDACTED];
- Letter of [REDACTED] former co-worker of the petitioner's husband;
- Letter of [REDACTED] the petitioner's friend and co-worker;
- Letter of [REDACTED] the petitioner's co-worker;
- Letter of [REDACTED] an acquaintance of the petitioner and her husband;
- Letter of [REDACTED] friend of the petitioner;
- Letter of [REDACTED] former neighbor of the petitioner and her husband;
- Letter of [REDACTED] friend and co-worker of the petitioner;

Cards and Photographs

- Copy of a wedding card addressed to the petitioner and her husband from the petitioner's family;
- Copies of two greeting cards addressed to the petitioner from her husband;
- Copies of 31 photographs of the petitioner and her husband obtaining their marriage license, at their wedding, at their birthday party in March 2002, decorating a Christmas tree, at a holiday party with friends in December 2001, and on three other occasions;
- Two photographs of the petitioner's wedding ring given to her by her husband and purportedly engraved with his name and the date of their marriage (submitted on appeal);
- Copy of an Easter card for a son signed by the petitioner's husband (submitted on appeal);

Documents

- Copy of the 2002 joint federal income tax return of the petitioner and her husband and the corresponding tax return transcript from the Internal Revenue Service (IRS), which shows that

- the petitioner and her husband filed their return on April 15, 2003 as married filing jointly;
- Copies of electricity bills and a letter from the electric company dated February 11, August 21, November 27, 2002 and January 21, 2003 and one telephone bill dated March 5, 2002 that are addressed to the petitioner's husband at the former couple's residence on [REDACTED] in North Miami Beach (submitted on appeal);
 - Copies of telephone bills dated December 16, 2002 (submitted on appeal) and January 16, 2003 and addressed to the petitioner at the [REDACTED] residence and showing the same telephone number as that on the telephone bill listed above and addressed to the petitioner's husband;
 - Copies of earnings statements of the petitioner's husband dated February 14, March 28, and May 9, 2003, which state his address as the [REDACTED] residence (submitted on appeal);
 - Copy of the joint residential lease of the petitioner and her husband dated January 7, 2003 for an apartment on [REDACTED] in North Miami Beach, Florida;
 - Copies of electricity bills dated February 19, March 21 and April 22, 2003 (latter two submitted on appeal) and addressed to the petitioner's husband at the [REDACTED] residence;
 - Copies of a cable bill dated March 30, 2003 and telephone bills dated March 12, April 10 and April 24, 2003 that are addressed to the petitioner at the [REDACTED] residence (submitted on appeal);
 - AT&T Broadband work orders dated March 3 and March 5, 2003 that are addressed to the petitioner with her husband's surname at the [REDACTED] residence and which state the first name of the petitioner's husband as the caller and a work order dated April 17, 2003 that is signed by the petitioner's husband (submitted on appeal);
 - Copy of letter dated May 23, 2003 from the Department of the Treasury that is jointly addressed to the petitioner and her husband, which shows that their federal income tax refund was applied to the educational debt of the petitioner's husband; and
 - Copy of an application for public benefits signed by the petitioner's husband on July 16, 2003, which lists the petitioner and her son as his wife and stepson.

In her affidavits, the petitioner explains that she came to the United States with her son to visit her cousin, [REDACTED], and her family in Miami and that she met her husband on the night of her arrival when she and her cousin's family went to the restaurant at which both [REDACTED] and the petitioner's husband worked. The petitioner states that her husband was their waiter and she noticed his blue eyes, thought he was very handsome and was immediately attracted to him.

A couple of weeks later, the petitioner reports that she went to the restaurant again and spoke to her husband for the first time. She explains that at that point her English was not very good, so other people at the restaurant helped her by translating when she could not understand what her husband had said. The petitioner states that during their first conversation, she and her husband talked about why she had come to the United States, how long she planned to stay and about her husband's mother who had recently passed away. The petitioner explains that after speaking with her husband, she thought he

was very nice and friendly and that she would enjoy dating him, but that she was not thinking of a serious relationship at that time.

The petitioner reports that during the five months that she stayed with [REDACTED] she spoke to her husband almost every day on the telephone and saw her husband about three days a week when they would go shopping, go out to eat and watch movies and television together. The petitioner explains that although she only spoke a little English, her husband understood a lot, and spoke some, Spanish so they were able to understand each other pretty well. The petitioner also states that her son was always with the former couple when they were together, that her husband and her son got along very well and that it seemed as though her husband loved children.

The petitioner further explains that during this time, she felt as though she and her husband were close friends. She states that she liked her husband's personality and the fact that he was educated and responsible. The petitioner states that her husband helped her purchase clothes and food and helped her take care of her son. The petitioner explains that she knew her husband liked her, but she was not ready to commit to him because she felt she had to return to her family and life in Bolivia.

In late September 2000, the petitioner states that she and her son went to visit friends in Washington, District of Columbia, who encouraged her to stay in the United States. The petitioner reports that she began working, but that life became very hard for her in the winter. The petitioner states that her husband would often call her and when she confided in him about her difficulties and her possible return to Bolivia, her husband asked her to return to him in Miami. The petitioner states that her husband told her he loved her and her son and that he wanted to help her and wanted them to be a family.

The petitioner explains that her husband proposed marriage, but she was not sure and decided to return to Miami to get to know her husband better. The petitioner states that she and her son returned to Miami in early December 2000, but did not move in with her husband. The petitioner reports that she and her husband went out to dinner and movies and took her son to the beach, the park and festivals. In January 2001, the petitioner states that her husband again proposed to her. When the petitioner told him that their life would not be easy because she did not have a good job, she states that her husband told her that he wanted to help and that he could give her a better life. The petitioner explains that she agreed to marry her husband because she wanted to have a home and a family, security and love and because she thought that her husband could give her those things. The petitioner reports that she could tell that her husband really loved her and she felt as though she loved him also.

The petitioner explains that the former couple discussed their future and made plans, for example, of having children together, buying a car and saving money to visit her family in Bolivia. The petitioner states that the former couple went shopping together for things for their future home like dishes and bedding and that her husband paid for all the items. During this time, the petitioner states that although they did not yet live together, her husband helped her clean and cook and picked her son up from school and helped him with his homework.

The petitioner states that her birthday, March 19th, is also Father's Day in Bolivia and that on that date in 2001, her husband wanted to speak to her father. The petitioner reports that the former couple called her parents, her husband told her father in Spanish that he wanted to marry her and her parents were very happy for her. The petitioner also explains that she had a bad accident in Bolivia on April 30, 1998 and that when she told her husband about the accident, they decided to get married on April 30, 2001 to replace her bad memories with good ones.

The petitioner reports that she and her husband were married at a courthouse in Miami and that her son, [REDACTED] husband and some other friends accompanied them. Afterwards, the petitioner states that they all went out to eat at the restaurant where her husband and [REDACTED] were employed and then she and her husband went to the beach and spent a long time talking about their future. After their marriage, the petitioner explains that she, her husband and her son lived at [REDACTED] home for approximately eight months because they needed time to find an apartment and save money for the rent and security deposit. The petitioner states that she and her husband gave [REDACTED] three hundred dollars a month and helped with food, but that they had no formal agreement with [REDACTED]. The petitioner explains that she and her husband had no utilities bills in their names because [REDACTED] and her family had already lived at the home for some time before the petitioner and her family moved in.

The petitioner further explains that she and her husband never opened a bank account or obtained any credit cards together because her husband did not want to and did not tell her why. The petitioner states that the former couple did not jointly file a tax return in 2001 because her husband told her that he never paid income taxes and she did not question him. However, the petitioner reports that after their tax refund was taken to pay her husband's student loans, she realized that her husband had a large debt and bad credit. The petitioner states that she and her husband always paid for everything in cash or with money orders, that neither she nor her husband owned a car during their marriage and that they did not make any major purchases together. The petitioner further explains that she never had any kind of insurance through her jobs and that her husband was going to add her to his health insurance when he was employed at the restaurant, but then he was arrested and could not return to that job.

The petitioner states that in June 2001, the Federal Bureau of Investigation (FBI) took her husband into custody while he was at work pursuant to a warrant for his arrest for criminal sexual contact in New Jersey. The petitioner states that her husband was gone for several months and that after his return, she was upset, but wanted to give him another chance and told him that they had to find their own apartment because her cousin and her husband did not want the petitioner's husband to be in their home with their children.

In January 2002, the petitioner states that she, her husband and her son moved into an apartment on [REDACTED] in North Miami Beach. The petitioner explains that she and her husband both signed the lease for this apartment, but that when she tried to obtain a copy of the lease, she found out that the building had changed owners and the new owners did not have her paperwork. The petitioner

further explains that she and her husband paid the rent with money orders and her husband bought all of the things for their home because he was making more money. The petitioner states that the electricity bill for this apartment was in her husband's name because he set up the account and the telephone and cable bills were in her name because she set up those accounts.

During their residence at [REDACTED], the petitioner reports that her husband would help her with domestic chores and would take her son to the park and the beach, helped him with his homework and attended all of his school functions. The petitioner states that she was happy with her husband and their marriage at this time, but then her husband began to abuse her.² The petitioner states that in May 2002, she came home and found that her husband had taken all of her money and disappeared. The petitioner states that her husband returned in September 2002 and continued to abuse her and that due to the repeated inquiries of a neighbor that overheard their fights, the former couple moved in January 2003.

The petitioner explains that despite their problems, she stayed with her husband because she could not return to her cousin's home and could not afford an apartment on her own. The petitioner also explains that she was waiting for her husband to change back into the loving person he was before and she wanted to spend more time together with him as a family. After the former couple moved into their second apartment on [REDACTED] in North Miami Beach in January 2003, the petitioner states that things went well at the beginning and her husband treated her more nicely, promised to change, said he wanted to start over, and helped her take care of their home and her son. The petitioner explains that she and her husband paid their rent for the [REDACTED] apartment with money orders and they never got receipts. The petitioner states that the electricity bills continued to be in her husband's name and the telephone and cable bills continued to be in her name because they just changed their address on the existing accounts. The petitioner explains that they paid all their bills with cash or money orders.

The petitioner states that her husband soon changed for the worse and eventually disappeared in May 2003. The petitioner reports that she and her son moved to a different apartment in 2004 and that when they moved, she gave away or disposed of her husband's belongings and that she has nothing else left to document their relationship. The petitioner explains that she remains married to her husband because she still loves him and is not yet ready to end their relationship. The petitioner states that she still does not understand why her husband changed and she wants to see him again and be assured that he is alright.

The petitioner's cousin, [REDACTED] and the petitioner's friends and acquaintances largely corroborate the petitioner's statements. [REDACTED] explains that at the time of the petitioner's

² The petitioner describes her husband's abuse in probative detail in her October 14, 2005 and May 18, 2006 affidavits. The director determined, and we concur, that the petitioner established the requisite battery or extreme cruelty. We mention the abuse only in so far as it impacted the petitioner's ability to document her good-faith entry into marriage with her husband.

arrival in the United States, [REDACTED] was a manager at the restaurant where the petitioner's husband was employed as a waiter and that she had known the petitioner's husband for two years. [REDACTED] states that on the night of the petitioner's arrival, she noticed that the petitioner kept looking at her future husband and commented on his blue eyes and nice demeanor. [REDACTED] states that the petitioner's husband asked if he could call the petitioner and [REDACTED] had no objections because she thought the petitioner's husband was a responsible and dependable person.

After the petitioner told [REDACTED] of her plans to marry, [REDACTED] explains that she warned the petitioner that she should be careful and get to know her husband better, but [REDACTED] also states that she liked the petitioner's husband and saw that the petitioner was in love with him. [REDACTED] states that she attended the former couple's wedding and mentions that they were joking about how people have to pay to get married and so she took pictures of the petitioner and her husband making their payment. After the wedding, [REDACTED] states that they all went out to eat at the restaurant where she and the petitioner's husband were employed because [REDACTED] had told the story of how she and her husband had eaten at the same restaurant after their wedding at the same courthouse.

[REDACTED] confirms that the petitioner, her son and her husband lived with [REDACTED] and her family after they were married. She states that during this time, the petitioner and her husband seemed like a normal couple, that the petitioner's husband seemed to have a normal relationship with the petitioner's son and that the two families threw parties together. [REDACTED] also confirms that a few months later, the FBI arrested the petitioner's husband at work.

[REDACTED] states that after the petitioner's husband returned, the petitioner's family moved into their first apartment together on [REDACTED] and that she drove the petitioner's husband to stores to purchase items for the former couple's new home. [REDACTED] states that she visited the petitioner and her family at the [REDACTED] residence for social events like birthday parties and when picking up the petitioner's son to come and play with her children. [REDACTED] describes in detail the former couple's apartment and states that they kept their framed wedding picture on the coffee table in their living room.

[REDACTED] further states that she continued to visit the petitioner and her family at their second apartment on [REDACTED]. Again, [REDACTED] describes the residence in detail and states that the former couple kept their wedding photograph on their living room coffee table in this apartment as well. [REDACTED] reports that during her visits to their home, the petitioner and her husband often hugged and kissed in her presence.

The petitioner's claim is also supported by the testimony of nine other relatives, friends and acquaintances. [REDACTED]'s son, Christopher, states that when the petitioner, her son and her husband lived with his family, they went out together to restaurants, stores, the movies and that the petitioner's husband went with him and his family to Fort Myers. On most holidays, Christopher states that the petitioner and her husband gave him and his sister gifts. Although he largely discusses the

abuse, [REDACTED] also attests that he lived in an apartment close to that of the petitioner, her son and her husband at the [REDACTED] building and that the former couple always presented themselves as husband and wife.

[REDACTED] states that she worked at the restaurant where the petitioner's husband was formerly employed, that she translated for the petitioner when the former couple was getting acquainted and that she witnessed their marriage. [REDACTED] states that she worked with the petitioner at Marshalls and that because she answered the telephone at the store, she knew that the petitioner's husband frequently called the petitioner and came looking for her at work. [REDACTED] also observed that the petitioner bought a lot of things for the former couple's home. [REDACTED] another co-worker of the petitioner's at Marshalls, states that the petitioner's husband often came to the store to see the petitioner during her lunch hour and that [REDACTED] and her co-workers were very happy for the petitioner when she announced the former couple's marriage. [REDACTED] states that she often saw the petitioner and her husband together and individually taking the petitioner's son and their neighbor's children to school or picking them up and that she once visited the former couple's home when they gave her some books for her child. [REDACTED] states that she celebrated Christmas and New Year's Day with the petitioner and her family when they were living with [REDACTED] and that the petitioner was very happy when her husband gave her a beautiful set of candles for Christmas. [REDACTED]

[REDACTED] reports that when he was visiting Miami, he lived around the corner from the petitioner and her family and that he once went to their home to celebrate their birthdays and they ate cake and food that the petitioner's husband had cooked. [REDACTED] states that she worked with the petitioner at Marshalls where she would always see the petitioner with her husband and that the former couple once came to Ms. Balarezo's home to have lunch with her family.

The relevant documentary evidence also supports the petitioner's claim. The petitioner submitted evidence that she jointly filed a 2002 federal income tax return with her husband. Although the petitioner only submitted a copy of the former couple's joint residential lease for the [REDACTED] Street apartment, she credibly explains that the former couple did not have a formal agreement with [REDACTED] when they lived in her home right after their marriage and that she was unable to obtain a copy of the lease from their first apartment on [REDACTED]. The electricity and telephone bills and the earnings statements of the petitioner's husband, although addressed to the petitioner and her husband individually, are all dated during the period of the former couple's residence at [REDACTED] and are all addressed to this residence. In addition to the lease, the electricity, telephone and cable bills also confirm the former couple's joint household at the [REDACTED] address. The AT&T Broadband work orders further show that the former couple shared responsibility for this account and were maintaining a joint household at that time. The greeting cards and photographs provide additional, historical corroboration of the petitioner's marital relationship.

The Director's Decision

In her December 5, 2006 decision, the director stated:

Aside from your 2002 jointly filed tax return, the record does not contain evidence that you and your spouse shared financial responsibilities or routinely maintained a common household. Although requested, you did not provide an explanation for the unavailability of such evidence. Likewise, although you indicated that your spouse was authorized to pick your son up at school, you did not submit evidence that he was involved in the care or education of your child. You did not provide an explanation for the unavailability of this evidence. Finally, although we requested additional evidence regarding your "courtship, wedding ceremony, residences, special events, etc., you did not provide such evidence or an explanation regarding its unavailability. . . . Despite a claimed relationship of at least two years, the record does not contain any primary evidence documenting the period of time leading up to your marriage which would assist in establishing that the marriage was entered into in good faith or evidence of your conduct and activities as a married couple after the marriage ceremony.

The director's statements disregard relevant evidence submitted below, improperly require the submission of certain evidence or an explanation of its unavailability and indicate that the director failed to consider the impact of the abuse and the petitioner's economic situation on her ability to document her marital relationship. First, despite the director's contrary conclusion, the petitioner credibly testified regarding the three households that she shared with her husband during their marriage.

The petitioner submitted a copy of the joint lease for the former couple's [REDACTED] apartment and in her May 18, 2006 affidavit, [REDACTED] credibly described the petitioner's three joint residences with her husband in probative detail. The record below documented that the former couple's 2002 federal tax refund was applied to the outstanding educational debt of her husband and on appeal, the petitioner credibly explains why she and her husband did not have joint financial or credit accounts and did not have the financial resources to purchase a car or other major items together during their marriage. The AT&T Broadband work orders submitted on appeal also show that the former couple shared responsibility for that account and were maintaining a shared household at the [REDACTED] address.

Second, the director stated that the petitioner did not submit evidence that her husband was involved in the care or education of her son. In her affidavits submitted below, the petitioner did not discuss in detail her husband's relationship with her son. However, she submitted copies of photographs of her husband and her son and a letter from [REDACTED], who states that she always saw the petitioner and her husband jointly and individually taking the petitioner's son to and from school. [REDACTED] also attests to the relationship of the petitioner's husband and her son during the family's residence with [REDACTED]. On appeal, the petitioner describes her husband's relationship with her son in probative detail and submits a copy of a greeting card given to her son by her husband and a copy of her husband's application for public benefits on which he has listed the petitioner's son as his stepson.

Third, the director stated that the petitioner did not submit evidence of "her courtship, wedding ceremony, residences, special events, etc.," primary evidence of her courtship period, or evidence of the former couple's "conduct and activities as a married couple." In her affidavits submitted below, the petitioner described her courtship, wedding, residence with her husband and their marital relationship,

although the petitioner's testimony primarily concerned her husband's abuse. However, the petitioner also submitted below documentation of the former couple's joint residences, joint tax return and photographs of their wedding, birthday and holiday celebrations and other social events. In addition, [REDACTED] a described in probative detail the petitioner's courtship, wedding and joint residences with her husband. [REDACTED]

[REDACTED] and [REDACTED] also provided credible details regarding the petitioner's courtship and marital relationship. On appeal, the petitioner describes in detail how she met her husband, their courtship, decision to marry, wedding, shared residences and marital relationship and she submits further, relevant evidence of the former couple's shared households.

Fourth, the director repeatedly stated that the petitioner did not submit an explanation for why certain evidence was unavailable. However, as the regulations mandate, "The self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable." 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1). Rather than discuss the insufficiency or incredibility of all the relevant testimonial and documentary evidence, the director simply concluded, "Given the length of your relationship, the Service finds that the affidavits you submitted, combined with photographs and evidence of a jointly filed tax return, are not a sufficient basis upon which to determine that you entered into marriage in good faith."

The director's conclusion indicates that she failed to consider how the petitioner's economic situation and the actions and abuse of the petitioner's husband impacted the petitioner's ability to document their relationship. The record below established that the petitioner's husband was arrested and absent from the former couple's first home for several months in 2001 and that her husband disappeared for approximately five months in 2002. Hence, although the petitioner and her husband were married for two years before her husband's final disappearance, the duration of their actual residence together was much shorter. The evidence submitted below also showed that the petitioner and her husband had limited financial resources and that their 2002 federal income tax refund was applied to her husband's educational debt.

On appeal, the petitioner has submitted additional testimonial and documentary evidence which further establishes that her husband's behavior and abuse, combined with the former couple's limited financial means, significantly impacted her ability to document their relationship. Despite those obstacles, the petitioner has submitted numerous documents and testimony from ten individuals that support her claim.

In sum, the evidence demonstrates that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. We concur with the director's determination that the petitioner meets all the other statutory requirements. Accordingly, the petitioner has established her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition will be approved.

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 met that burden. Accordingly, the appeal is sustained.

Derivative Beneficiary

The petitioner listed her minor son on her Form I-360 and submitted a copy of the certified translation of her son's birth certificate. However, as noted by the director in the NOID, the petitioner failed to submit a copy of the original birth certificate. If the petitioner wishes her son to be a derivative beneficiary of her petition, she must submit a legible copy of his original birth certificate from Bolivia as specified in the NOID.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.