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U.S. Citizenship
and Immigration
Services

B9



FILE: [REDACTED]
EAC 06 038 52534

Office: VERMONT SERVICE CENTER

Date: MAY 29 2007

IN RE: Petitioner: [REDACTED]

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:



PHOTIC COPY

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
f 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 dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 denied the petition pursuant to section 204(g) of the Act and because the petitioner did not establish the requisite joint residence and good moral character.

On appeal, counsel submits a brief.

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been

committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

* * *

(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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the

abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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.

Pertinent Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guatemala who entered the United States on March 6, 1991 without inspection. On March 23, 1995, the petitioner was served with an Order to Show Cause and Notice of Hearing in deportation proceedings. On May 11, 1995, the petitioner was ordered deported *in absentia*. Her proceedings were later reopened before the San Francisco Immigration Court and her next hearing is scheduled for August 22, 2007. On October 16, 1998, the petitioner married R-B-,* a U.S. citizen, in California.

On December 15, 2003, the petitioner filed a prior Form I-360 petition (receipt number EAC 04 055 50754) which was denied on March 29, 2005 for lack of the requisite good-faith entry into the

* Name withheld to protect individual's identity.

marriage, battery or extreme cruelty, joint residence and pursuant to section 204(g) of the Act. The petitioner did not appeal the adverse decision.

On November 17, 2005, the petitioner filed the instant Form I-360. All of the supporting documents submitted with the instant petition are copies of the documents submitted with the prior Form I-360 petition with the exception of a few additional documents relating to the criminal proceedings against the petitioner's husband. On May 22, 2006, the director issued a Notice of Intent to Deny (NOID) the instant petition pursuant to section 204(g) of the Act and for lack of the requisite joint residence and good moral character. The petitioner, through counsel, responded to the NOID with additional evidence. On August 17, 2006, the director denied the petition on the grounds cited in the NOID and the petitioner timely appealed.

On appeal, counsel claims that the director disregarded relevant evidence submitted below which established the petitioner's eligibility. Counsel's claims fail to overcome the grounds for denial. Beyond the director's decision, the petitioner has also failed to demonstrate that she entered into marriage with her husband in good faith and that her husband subjected her or any of her children to battery or extreme cruelty during their marriage.

Good-Faith Entry into Marriage

Beyond the director's decision, the petitioner failed to establish that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The record contains the following evidence relevant to the petitioner's allegedly good-faith entry into the marriage:

- The petitioner's personal statement, the translation of which was certified on January 7, 2005 and her July 20, 2006 sworn statement;
- Letter of the petitioner's daughter, [REDACTED];
- Letter of the petitioner's son, [REDACTED];
- November 13, 2004 joint affidavit of [REDACTED] and [REDACTED];
- November 11, 2004 affidavit of [REDACTED] and his July 13, 2006 letter;
- July 14, 2006 letter of [REDACTED];
- July 15, 2006 letter of [REDACTED];
- July 15, 2006 letter of [REDACTED] and [REDACTED];
- Letter of [REDACTED]; written in Spanish and submitted without an English translation;
- Copies of the petitioner's 1999, 2000 and 2001 federal income tax returns filed as "Married filing separate return;"
- Copies of the permanent resident cards of the petitioner's children, [REDACTED], [REDACTED] and [REDACTED]; and
- Residential Rental Agreement signed by the petitioner and her husband as joint tenants and dated November 15, 1997 for an indefinite lease term beginning December 1, 1997.

In her personal statement, the petitioner reports that she met her husband in 1996 at a dinner with friends. The petitioner states that they became friends and in 1997, her husband surprised her with a bouquet of flowers and they formally began their courtship. The petitioner explains that she liked her husband's respect and support. The petitioner states that after their marriage, she moved in with her husband and he filed visa petitions for her children. In her July 20, 2006 sworn statement, the petitioner affirms that she married her husband in good faith, but offers no further, probative information.

The petitioner's daughter, [REDACTED], and her son, [REDACTED], fail to provide sufficient, detailed information to support her claim. Telma states that her mother introduced her to the petitioner's husband in 1997 over the telephone and that her mother told her that he was a good person and they had a nice relationship. [REDACTED] reports that she and her siblings were happy when the petitioner married her husband because he had gained their affection and they thought of him as a father. [REDACTED] states that the petitioner's husband sent her flowers for her 15th birthday. [REDACTED] explains that after she arrived in the United States, her pregnancy caused disputes between her mother and her stepfather, but that after her son was born, she would visit them and her stepfather was nice to her.

The petitioner's son, [REDACTED], confirms that he began speaking with the petitioner's husband in 1997 over the telephone and by the time the former couple married, the petitioner's husband had gained the affection of him and his siblings. [REDACTED] states that the petitioner's husband obtained the children's green cards and they went to live with the petitioner and her husband in the United States. [REDACTED] reports that the petitioner's husband treated him well, but that the petitioner and her husband later decided to separate. Although they indicate that they had relatively good relationships with the petitioner's husband, neither [REDACTED] nor [REDACTED] provide any probative details about the petitioner's behavior towards her husband or her marital relationship that [REDACTED] and [REDACTED] directly observed after they arrived in the United States.

The testimony of the petitioner's friends also fails to provide detailed information to support her claim. [REDACTED] and [REDACTED] state that they were close friends of the petitioner and her husband since 1998 and declare that the former couple "married for love." Yet Mr. and Mrs. [REDACTED] do not provide any details or describe any particular incidents where they interacted with the former couple.

[REDACTED] states that he was a witness at the petitioner's wedding and lived with the former couple for an unspecified period of time. [REDACTED] reports that the petitioner and her husband were "a very loving couple and seemed very happy together." In his July 13, 2006 letter, [REDACTED] states that he and the former couple did many outdoor activities together and once traveled to Reno, but [REDACTED] does not describe the behavior of the petitioner prior to, during or after her marriage or provide any probative details regarding the petitioner's marital relationship that he personally witnessed.

██████████ and ██████████ state that they lived in an apartment where the petitioner's husband was the building manager and they developed a nice relationship with the former couple. ██████████ and ██████████ state that they celebrated holidays with the petitioner and her husband and noticed that the former couple was always together until they separated. Yet ██████████ and ██████████ do not discuss in detail any particular incidents of the petitioner's behavior towards her husband, as they observed, that would demonstrate her good-faith entry into the marriage.

██████████ simply states that he worked with the petitioner's husband, that the petitioner's husband had a short temper, but seemed to change when he got married. ██████████ provides no detailed information regarding the petitioner's allegedly good-faith entry into the marriage. ██████████ states that she met the petitioner's husband at a picnic and in one, unspecified year, she spent Thanksgiving and Christmas with the former couple. ██████████ does not describe the petitioner's behavior regarding her husband or her marital relationship, as she observed at the picnic or the two holidays she spent with the former couple. The letter of ██████████ is written in Spanish and was not submitted with a certified, English translation, as required by 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The relevant documents also fail to support the petitioner's claim. The single joint document in the record is the 1997 residential rental agreement, which contradicts the petitioner's statement that she did not live with her husband until they were married in 1998. The petitioner's 1999, 2000 and 2001 income tax returns show that she was married to R-B- during those years, but the returns were submitted as "married filing separate return," which shows that the petitioner did not share tax liability with her husband.

On appeal, counsel claims that the fact that the petitioner's husband petitioned for three of her children establishes that the former couple had a bona fide marriage. However, the approval of the immediate relative visa petitions filed by the petitioner's husband on behalf of her three youngest children simply shows that her husband established a stepparent relationship with the children pursuant to section 101(b)(1)(B) of the Act. While relevant to the marital intentions of the petitioner's husband, the approval of the children's visa petitions does not establish the petitioner's own good-faith in entering her marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii), despite her attestation that she lived with her husband for nearly four years. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The petitioner only briefly describes how she met her husband and the initiation of their courtship. She does not describe in probative detail the former couple's courtship, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. The testimony of the petitioner's children and friends also fails to provide sufficient, probative information to support her claim. The only document jointly issued to the petitioner and her husband indicates that they began living

together at a time when the petitioner denies their joint residence. Moreover, the petitioner's income tax returns indicate that she did not share tax liability with her husband for the majority of their marriage (before their separation) and the petitioner submitted no other evidence that she and her husband shared financial or other types of assets and liabilities. Accordingly, the evidence fails to establish 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.

Section 204(g) of the Act

We concur with the director's determination that section 204(g) of the Act further bars approval of this petition. Section 204(g) of the Act states:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record in this case shows that the petitioner remarried R-B- while she was in deportation proceedings. The record does not indicate that the petitioner resided outside of the United States for two years after her marriage.

The bona fide marriage exception to section 204(g) of the Act also does not apply to the petitioner. Section 245(e) of the Act states:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith

and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). To demonstrate eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any relevant, credible evidence shall be considered. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. §§ 1154(a)(1)(A)(iii)(I)(aa), 1154(a)(1)(J); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard").

As the petitioner has failed to establish that she entered into her marriage with R-B- in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has also failed to demonstrate that she qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, section 204(g) of the Act requires the denial of this petition.

Battery or Extreme Cruelty

Beyond the director's decision, the petitioner has not demonstrated that her husband subjected her or any of her children to battery or extreme cruelty during their marriage, as required by section

204(a)(1)(A)(iii)(I)(bb) of the Act. The record contains the following evidence relevant to the petitioner's claim of battery or extreme cruelty:

- The petitioner's personal statement, the translation of which was certified on January 7, 2005;
- Letter of the petitioner's son, [REDACTED];
- January 3, 2005 letter of [REDACTED], Drop In Center Advocate at La Casa de las Madres;
- Copies of the petitioner's medical records;
- March 20, 2003 newspaper article concerning the criminal charges against the petitioner's husband; and
- Court documents relating to the criminal proceedings against the petitioner's husband.

In her personal statement, the petitioner reports that after their marriage, her husband began to take advantage of her undocumented status, said that she "was an illegal that could not do anything" and told her not to call the police because they would turn her in to immigration authorities. The petitioner states that on one occasion when she did not have money to help her husband with his car repair, he treated her badly and told her to leave the house. The petitioner states that the end of 1999 was the most difficult period and she became severely depressed and went to the hospital. The petitioner states, "I only had the courage one time to say anything because I would always remember that my husband had told me that there was nothing that I could do because of my legal situation."

The petitioner reports that when her daughter, Telma, came to the United States, Telma was pregnant and the petitioner's husband wanted her to give the child up for adoption. When the petitioner and her daughter refused, the petitioner states that her husband told her that her legal situation did not allow her to help her daughter and her daughter had to leave and move in with her oldest son. After her grandson was born, however, the petitioner states that her husband was fond of the baby and asked her daughter to visit them. The petitioner states, "Even though [my husband] treated me badly in several aspects, I do appreciate the fact that he always treated my children well."

The petitioner reports that she and her husband separated, but then improved their relationship and were thinking of getting back together when she was detained by immigration authorities. The petitioner states that her husband was worried about her and tried to help her, but then he was arrested himself. The petitioner concludes, "Now that I have been released, I go to visit him and he writes to me."

The remaining, relevant evidence does not support the petitioner's claim. The court documents and newspaper article show that the petitioner's husband was charged with committing over 100 sexual crimes against minors between 1981 and 2003. The newspaper article states that the petitioner's husband "married a Guatemalan woman and possibly tried to have sex with one of her sons but was rejected." An undated copy of an Affidavit for Search Warrant filed with the Superior Court of the Oakland, Piedmont and Emeryville District of Alameda County, California, further states that the investigating officer spoke with the petitioner's son, who stated that on three occasions when the petitioner's son was 17, the petitioner's husband touched his male organ against his will. The name

of the petitioner's son is redacted from the copy in the record. The affidavit further reports that acquaintances of the petitioner's husband stated that he was not attracted to the petitioner, but married her in order to gain access to her children.

However, the record is devoid of any corroborative evidence that the petitioner's husband committed sexual offenses against any of the petitioner's children. The affidavit states that Oakland Police report number [REDACTED] was generated to document the incidents reported by the petitioner's son, but the petitioner did not submit a copy of this police report and no offenses against the petitioner's son are cited in the criminal complaint filed against the petitioner's husband. Most importantly, neither the petitioner nor her son, [REDACTED] acknowledges any abuse committed against the petitioner's children by her husband. To the contrary, the petitioner states, "I do appreciate the fact that [my husband] always treated my children well." Although the submitted copy of the search warrant affidavit does not include the name of the petitioner's son interviewed by the investigating officer, the record indicates that the son was either [REDACTED] or [REDACTED], the petitioner's three older sons. Oscar states that he did not arrive in the United States to live with his mother and her husband until 2001, when he was nearly 20 years old, not 17, as reported in the search warrant affidavit. In addition, Oscar states that during the time that he and his siblings lived with the petitioner's husband, "he treated us very well and we never had any problems with him." Although the record indicates that the petitioner's eldest son, Ismar, was living in the United States in 2001, the evidence shows that [REDACTED] would have been 17 years old in 1996, two years before the petitioner married and states that she began living with her husband. Finally, the record contains no evidence that [REDACTED] was in the United States when he was 17 or that he ever lived with the petitioner and her husband. [REDACTED] and Ismar have provided no testimony in these proceedings.

The record also fails to support the petitioner's claim that her husband subjected her to extreme cruelty during their marriage. Although the petitioner indicates that she once mentioned her husband's alleged abuse when she sought medical treatment for her depression, her medical records contain no reference to abuse by R-B-. Rather, a consultation report dated May 4, 1999 states that the petitioner has "chronic depression, PTSD related to childhd [sic] physical abuse and 13 yrs. DV in first marriage. Sx have exacerbated due separation from children in Guatemala and news of possible abuse towards pt's children who are being cared for by sister. Currently pt is not in DV relationship" (abbreviations in original). A checklist of trauma history on the consultation report further indicates that the petitioner experienced domestic violence in the past, but not present. The trauma history section contains the following comments: "Childhd [sic] physical abuse by mo followed by 13 yrs of DV by alcoholic H. Concerns for children who are possibly being abused by sister. No DV currently."

The petitioner states that her husband frequently referenced the petitioner's lack of immigration status during their marital conflicts. However, the petitioner fails to provide detailed, probative descriptions of particular incidents of threats sufficient to show that her husband's behavior rose to the level of extreme cruelty, as described by the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The letter from La Casa de las Madres, a domestic violence agency, also fails to provide probative details to

support the petitioner's claim. [REDACTED] states that the petitioner first sought assistance at the agency in October 2004. [REDACTED] states that the petitioner reported that after her husband learned of her prior deportation order, her immigration status became the subject of her husband's verbal abuse on a regular basis. Yet [REDACTED] provides no detailed information or analysis of the petitioner's mental health and demeanor, as observed by [REDACTED] during particular counseling sessions.

In sum, the relevant evidence fails to establish that the petitioner's husband subjected her or any of her children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Joint Residence

We concur with the director's determination that the petitioner did not establish that she resided with her husband. The record contains the following, relevant evidence:

- The petitioner's personal statement, the translation of which was certified on January 7, 2005;
- Letter of the petitioner's daughter, [REDACTED];
- Letter of the petitioner's son, [REDACTED];
- November 13, 2004 joint affidavit of [REDACTED] and [REDACTED];
- November 11, 2004 affidavit of [REDACTED] and his July 13, 2006 letter;
- July 14, 2006 letter of [REDACTED];
- July 15, 2006 letter of [REDACTED];
- July 15, 2006 letter of [REDACTED] and [REDACTED];
- Copies of the petitioner's 1999, 2000 and 2001 federal income tax returns filed as "Married filing separate return;" and
- Residential Rental Agreement signed by the petitioner and her husband as joint tenants and dated November 15, 1997 for an indefinite lease term beginning December 1, 1997.

On the instant Form I-360, the petitioner states that she resided with her husband from "10/1/199 [sic]" until July 1, 2002 and that they last lived together at a residence on [REDACTED] in Oakland, California. In her personal statement, the petitioner reports, "Once we married, I moved in with him in Oakland." However, the petitioner's statement contradicts the residential rental agreement, which was signed by the petitioner and her husband as joint tenants on November 15, 1997 for a lease term beginning on December 1, 1997, ten months before their marriage.

In addition, on the Forms G-325A, Biographic Information, of the petitioner and her husband that were submitted with the Form I-130, Petition for Alien Relative, filed by the petitioner's husband on her behalf, the petitioner states that she lived at the [REDACTED] address in Oakland from October 1998 to April 2001 and then at a residence on [REDACTED] in San Francisco beginning in April 2001. The petitioner's husband states that he lived at the [REDACTED] address in Oakland from November 1997 until April 2001 and then began living at the [REDACTED] address in San Francisco in April 2001. However, apart from the 1997 lease, the record contains no documentation

jointly addressed to the petitioner and her husband at the [REDACTED] residence in Oakland. The record is also devoid of any evidence jointly addressed to the petitioner and her husband at the San Francisco address.

The petitioner submitted the following documents addressed to her individually at the [REDACTED] Street residence: her 1999, 2000, and 2001 federal income tax returns; five payroll statements dated between December 6, 2001 and February 13, 2003; nine statements for her individual bank account dated between April 24, 2002 and January 27, 2003; and copies of two envelopes that are not postmarked. While this evidence shows that the petitioner resided at the [REDACTED] address during her marriage and after the former couple's separation, the documents do not establish that the petitioner resided with her husband at any time.

The petitioner's children, [REDACTED] and [REDACTED] state that they lived with the petitioner and her husband for an unspecified period of time after they arrived in the United States in 2001, but they do not state the address of the former couple's home or provide any other probative details regarding the petitioner's alleged residence with her husband. [REDACTED] states that he lived with the former couple at the [REDACTED] address, but he does not state the dates of his residence with the petitioner and her husband or provide any further, relevant information. [REDACTED] and [REDACTED] state that they spent holidays with the former couple, but they provide no relevant details regarding the former couple's marital residence.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii), despite her attestation that she resided with her husband for nearly four years. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The 1997 lease agreement is the only document in the record jointly issued to the petitioner and her husband. Yet the agreement contradicts the petitioner's own testimony that she did not begin living with her husband until after their marriage in 1998. Rather than provide an explanation on appeal, counsel perpetuates the discrepancy by claiming that the lease shows that the petitioner began residing with her husband in 1997. Despite the purportedly four-year long duration of the petitioner's cohabitation with her husband, the record contains no other documentation jointly addressed to the former couple or otherwise indicating that the petitioner and her husband resided at the same address at the same time. The brief, general statements of the petitioner, her children and friends are insufficient to establish her residence with her husband. Accordingly, the petitioner has not demonstrated that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Moral Character

As evidence of her good moral character the petitioner submitted a letter dated November 12, 2004 from the Oakland, California Police Department which states that '[REDACTED]' does "not

have a criminal conviction history in the Alameda County CORPUS file.” The petitioner also submitted her San Francisco, California Police Department Criminal History Record dated November 12, 2004, which states that she was arrested on February 27, 2003 in San Francisco and charged with burglary. However, a copy of the corresponding Superior Court of California, San Francisco order shows that the charge was dismissed upon motion of the district attorney on February 27, 2003.

As noted by the director in the RFE and NOID, the letters from the Oakland and San Francisco police departments are dated over a year before this petition was filed and do not establish the petitioner’s good moral character during the three years immediately preceding the filing of the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). In addition, the Oakland Police Department letter indicates that the search was based only on the petitioner’s name and does not indicate that all of the petitioner’s aliases were also checked. The record shows that in addition to [REDACTED] the petitioner has used the names “[REDACTED]” (on her medical records, tax returns and payroll and bank statements) and “[REDACTED]” (on the 1997 lease).

On appeal, counsel simply asserts that the evidence submitted below was sufficient to establish the petitioner’s good moral character. Counsel provides no explanation or evidence as to why the petitioner did not submit current police clearances or criminal background checks performed by searches of criminal records based on the petitioner’s fingerprints or all of her aliases. Accordingly, the petitioner has failed to demonstrate that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petitioner has failed to establish that she entered into marriage with her husband in good faith, that her husband subjected her or any of her children to battery or extreme cruelty during their marriage, that she resided with her husband and that she is a person of good moral character. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. In addition, approval of this petition is barred by section 204(g) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.