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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

DEC 08 2008

EAC 06 133 50708

IN RE:

Petitioner:



PETITION: Petition for Immigrant Abused 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.

John F. Grissom, Acting 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 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 denied the petition for failure to establish that the petitioner is a person of good moral character and that the petitioner entered into the marriage in good faith.

On appeal, counsel submits additional documents.

The AAO concurs with the director's determination that the petitioner has not established that the petitioner entered into the marriage in good faith. The AAO finds that the petitioner has submitted sufficient evidence on appeal to establish good moral character. The AAO also finds, beyond the decision of the director, that the petitioner has not established the requisite battery or extreme cruelty.

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, 8 U.S.C. § 1154(a)(1)(J), 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 explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

(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 explained 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.

* * *

(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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native

and citizen of Morocco. She married M-S-¹ a United States lawful permanent resident (now naturalized United States citizen) in Morocco on September 9, 2001. The record contains an approval notice of a Form I-130, Immigrant Petition for Relative, Fiance(E), or Orphan, with a notice date of January 11, 2005. The record also includes a Form I-485, Application to Register Permanent Resident or Adjust Status filed on March 3, 2006 and denied on February 8, 2007. The record further includes evidence that the petitioner's husband naturalized in May 2005 and the petitioner's husband included the petitioner on the N-400 petition as his spouse.

The petitioner filed the instant Form I-360 on March 13, 2006. The director issued a Notice of Intent to Deny (NOID) the petition on June 29, 2006. The director notified the petitioner that the record did not establish: that she had been subjected to extreme cruelty or abuse; that she had good moral character; and that she had entered into her marriage in good faith. The petitioner responded on July 28, 2006 by submitting an affidavit and additional evidence. After considering the evidence in the record, including the evidence submitted in response to the NOID, the director denied the petition on March 1, 2007. As will be discussed, the AAO finds that the petitioner has provided sufficient evidence to establish good moral character. The AAO concurs with the finding of the director that the petitioner failed to establish that she entered into her marriage in good faith. Beyond the decision of the director, the AAO determines that the petitioner has not established that she was battered or subjected to extreme cruelty by her spouse during their marriage.

Good Moral Character

The record before the director contained evidence of the petitioner's good moral character since her entry into the United States in 2005. On appeal, the petitioner submitted a translation of a Certificate Issued by the Criminal Records Office, Kingdom of Morocco, Ministry of Interior, General Direction of National Security, dated April 18, 2007. The certificate indicates that the petitioner did not have any felonies or misdemeanors "passed" by a Moroccan court. The AAO views this information, coupled with the information previously found in the record, sufficient to establish that the petitioner is a person of good moral character. As the petitioner has provided evidence sufficient to overcome the director's decision on the issue of good moral character, the director's decision is withdrawn as it relates to this issue.

Good Faith Entry into Marriage

At the time of filing, the petitioner submitted a personal affidavit claiming that she met her husband in Morocco when attending the wedding of her cousin and friend in August 2001. The petitioner reported that M-S- telephoned her several times after the wedding of her friend/cousin and that she and M-S- got to know each other via telephone. The petitioner indicated that two weeks later, M-S- proposed marriage by asking her father if he could marry her. The petitioner declared that she and M-S- were married on September 9, 2001 in Morocco. The petitioner noted that her husband was supposed to return to the United States on September 11, 2001 but because of the terrorist attacks in the United States, his return was delayed until September 21, 2001. The petitioner indicated her husband told her she could not come to the United States until she received her permanent residence. The petitioner declared "we continued to get to know each other

¹ Name withheld to protect individual's identity.

by telephone;” and that “during this period of time, my relationship with my husband was very good;” and “[w]e had very good conversations and he told me he loved me and missed me.”

The petitioner also indicated that she requested a visitor visa as a result of her husband expressing his desire to be with her and she traveled to the United States and stayed with M-S- in August and September 2003. The petitioner stated that M-S- was very kind, loving, and generous but he told her she could not remain with him as she was not a permanent resident. The petitioner reported that she missed her husband so much after her return to Morocco that she arranged a leave of absence from her work and returned to the United States in June 2004 and stayed for six months. The petitioner indicated that her husband was still acting like a good and loving husband and treated her well but again told her that she could not overstay her visitor visa, so she returned to Morocco. The petitioner declared that she entered the United States again on March 5, 2005 on a visitor visa, as she missed her husband. Once in the United States, the petitioner stated that she spoke to a lawyer, without telling her husband, and learned that since the I-130 petition on her behalf had been approved, her husband could file for her residency status while she remained in the United States. The petitioner provided no further details regarding her courtship, her feelings for her husband, or any other probative information to demonstrate her reasons for marrying M-S- much less that she entered into her marriage in good faith.

In response to the director’s NOID, the petitioner provided seven photographs of her marriage ceremony that show both she and her husband. In addition, the petitioner submitted an affidavit signed by both of her parents who indicate that the petitioner met M-S- at a family feast, that M-S- asked for her hand in marriage two weeks later, and that “[b]ecause of Islamic customs which prohibit an acquaintance relationship before marriage and of the constraints of time, there was no possibility of making more acquaintance.” The petitioner’s parents also declared: “[a]fter the wedding ceremony, the husband returned back to the USA to resume his work aiming at obtaining a legal residency for [the petitioner];” that the petitioner visited M-S- in 2003 and he treated her in a kind way; and that M-S- insisted that the petitioner give up her job in Morocco and join him in the United States in the summer of 2004, and confirmed to them that the petitioner could get a job and study without any problems. The record also included a second affidavit signed by the petitioner’s mother, wherein the petitioner’s mother declared that the petitioner, after making the acquaintance of M-S-, talked to M-S- by phone and “[e]ach time they talked to each other by phone, she got very delighted; so I concluded that that [sic] she fell in love with him.” The petitioner’s mother also noted that “[t]he pre-marriage was very short (M-S-’s holidays were over).” The petitioner’s mother further noted that her daughter kept in touch with her husband by phone and email and in 2003 when she returned from visiting her husband for three months, she looked delighted.

On appeal, the petitioner submits an affidavit signed by an aunt that is dated April 18, 2007. In the affidavit the petitioner’s aunt declares that she helped the petitioner choose her wedding dress and was the petitioner’s maid of honor. She also declares that when the petitioner was preparing her wedding she seemed so happy and in love. The petitioner’s aunt also notes that the petitioner believed that M-S- was in love with her and that he was paying for her wedding dress. The petitioner’s aunt states that she knows that the petitioner visited her husband two times in the United States, in 2003 for two months and in 2004 for six months. The petitioner’s aunt notes that upon her return from both visits, the petitioner indicated how much she loved

M-S- and how happy she was. The petitioner also submits a third affidavit from her mother who declares: “my daughter got married with M-S- because she loved him and believed he loved her.” The petitioner’s mother further states that before and after the marriage she observed the chemistry between the two and their apparent love for one another. The petitioner’s mother notes that the petitioner talked with M-S- over the Internet for hours and was happy to be with her husband when she visited him in 2003 and in 2004.

Although the petitioner has submitted affidavits from family members, both the petitioner and the affiants attest only to the fact that the petitioner and M-S- met at a wedding celebration, talked on the phone over a two-week period, and then had a marriage ceremony. Although the petitioner’s parents indicate that “[b]ecause of Islamic customs which prohibit an acquaintance relationship before marriage and of the constraints of time, there was no possibility of making more acquaintance” the information in the record does not provide any probative details about the petitioner’s relationship with M-S-, such as a description of their interactions with each other, even if only on the phone, or in the company of other members of the family. Although the petitioner’s parents and her aunt both state their belief that the petitioner stayed with her husband on her visits to the United States, the affiants do not provide information regarding the place the petitioner resided, do not discuss or otherwise relate what the petitioner did while staying with her husband, or provide any probative details to assist in substantiating their belief that the petitioner enjoyed a legitimate marriage. The petitioner’s aunt’s brief statement that the petitioner, when preparing her wedding, seemed so happy and in love and the petitioner’s mother’s statements that the petitioner spent hours on the Internet or phone with M-S- and after her visits with M-S- “looked delighted” are insufficient in the probative details necessary to substantiate the petitioner’s intent when entering into the marriage. Likewise the petitioner’s mother’s statement, in her third affidavit that she observed the chemistry between the petitioner and M-S- and believed they were in love is insufficient as a basis for concluding that the marriage was entered into in good faith. These affidavits do not establish the petitioner’s own good faith in entering the marriage.

As documentary evidence, the petitioner submitted photographs of the wedding ceremony; however, photographs of a wedding ceremony although evidence that a legal marriage took place, do not document the petitioner’s feelings or reasons for marrying M-S- and do not provide evidence of the requisite intent that would establish that the entry into the marriage was made in good faith. Moreover, the AAO observes that although M-S- apparently remained in Morocco an additional ten days subsequent to the marriage, neither the petitioner, the petitioner’s parents, nor friends or family provide photographs or information regarding their interactions in the ten days subsequent to the marriage. Further, the record does not include information shared by the petitioner upon her return from her visits with M-S- or any evidence other than general statements regarding the petitioner’s feelings. There are no probative details about the petitioner’s initial relationship with M-S- and the subsequent interactions with M-S- that allow a conclusion that the petitioner entered into the marriage in good faith.

As discussed above, the record contains scant documentary evidence to support a finding that the petitioner entered into her marriage in good faith. The AAO acknowledges counsel’s claim that the petitioner is unable to obtain documentary evidence of the marriage as M-S- locked her out of their residence in July 2005. However, while the lack of documentary evidence is not necessarily disqualifying, the petitioner’s testimonial evidence and the testimony submitted on her behalf also fail to support a finding that she entered

into this marriage in good faith. It is not just that the affidavits submitted are similar, as the director noted, but rather it is the generality and bareness of detail included in the affidavits that fail to establish the actual knowledge and legitimacy of the marriage. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the AAO finds that the petitioner has not established the requisite abuse to qualify to receive this benefit. In her March 6, 2006 statement in support of the petition, the petitioner declared that her husband treated her well when she visited him in 2003 and 2004. Similarly, the petitioner's friends and family repeated that she appeared happy and social upon her return to Morocco after her visits to the United States.

The petitioner in her March 6, 2006 statement alleges that her husband changed once she told her husband that she wanted to stay in the United States. The petitioner reports that she found out that she could stay in the United States, after visiting a lawyer unbeknownst to her husband.² The petitioner implied that from that time until her husband left for Morocco on July 19, 2005, she did not talk to strangers or to her friends or family as M-S- told her not to and she wanted to be a good and dutiful wife. The petitioner indicated that M-S- told her not to go outside and although M-S- would not permit her to go outside and work he also refused to provide her with food, clothing and money. The petitioner stated: "I could not even go to the drug store to get an aspirin. I was a prisoner." The petitioner alleged: M-S- would assault her verbally and physically; he would grab her shoulders and push her into the wall; he demanded sex when he desired and would grab her hair and pull her down; he would kick her at night and push her out of the bed; and he did not give her mail addressed to her. The petitioner reported that she sold some of her jewelry and when M-S- told her he needed the money to pay rent, she gave him the money and he took it and went to Morocco. The petitioner stated: "[w]hen M-S- got on the plane to go to Morocco, and I was out of the house, he had the locks changed on July 19, 2005 and I could not get back in." The petitioner indicated that she tried to have a locksmith help her get into the apartment but since nothing was in her name, the locksmith would not open the door. The petitioner noted that the landlord who was friendly with M-S- also refused to let her in. She also indicated that M-S- had left some of her personal belongings in garbage bags in the laundry room. The petitioner stated that she first went to a friend's house where she stayed four days. She then called the police who took her to a homeless shelter. The next day she went to see an acquaintance at the Dollar Store who offered her a job and a place to stay. The petitioner initially provided three affidavits in support of her statements:

- An affidavit signed December 12, 2005 by [REDACTED] who declares that she met the petitioner about a year and a half ago (June 2004) when the petitioner came to her store (a Dollar Store) and that they became friends. The affiant declares that the petitioner would visit her from time to time in the store. The affiant notes that after the petitioner moved to the United States with her husband she physically appeared to change, looking tired

² The petitioner entered the United States for the third time on March 5, 2005 as a B-1 visitor. She does not disclose when she visited an attorney and discovered she could remain in the United States while her status was processed.

and stressed out, and came to see her in tears. The affiant reports that one day the petitioner came to see her looking worse than she had ever been and told her that she had suffered repeated physical abuse by her husband and that he kept her socially isolated from her family. The affiant states that in July of 2005 the petitioner indicated that her husband had left for Morocco and had locked her out of the apartment and packed her things and left them in the laundry.

- An affidavit signed December 8, 2005 by [REDACTED] who declares that he is a limo driver and that he met the petitioner through a mutual friend several months ago. The affiant indicates that the mutual friend thought that the affiant would be able to help the petitioner by driving her around. The affiant declares that on August 26, 2005, their mutual friend told him the story about the petitioner's husband and how he had locked her out of the apartment. The affiant indicates that he called a locksmith and went with the petitioner to the apartment, but the locksmith would not open the door because the petitioner did not have identification other than her passport. The affiant reports that some of the petitioner's personal belongings were in the laundry room and they took pictures to document it. The affiant repeats information that the petitioner told him about her husband. The affiant states that from the first time he met the petitioner her physical appearance changed.
- An affidavit signed December 19, 2006 by [REDACTED] who declares that she first met the petitioner in July 2005. The affiant repeats information provided by the petitioner.

The record also contains a note signed by [REDACTED] who indicates that he responded to help the petitioner get into her apartment but since he could not verify that she lived there, he was unable to help her. The note signed by [REDACTED] is not on official letterhead and does not mention a specific address. The record also includes a September 8, 2005 letter stating that the petitioner stayed at the [REDACTED] [REDACTED] on July 31, 2005 and left on August 1, 2005.

The record further includes a report dated August 26, 2005, submitted by [REDACTED], Licensed Clinical Social Worker, who states that she saw the petitioner for two hours on August 26, August 29, and on October 10, 2005, for a mental status examination. Ms. [REDACTED] repeats information told to her by the petitioner. The information is inconsistent with the information provided in the affidavits of [REDACTED] i. For example, [REDACTED] stated: when M-S- left for Morocco on July 19, 2005, he left a note on the door informing the petitioner that her personal items were in the storage room and that the petitioner and the landlord found her things in the storage/laundry room; that the petitioner had no where to go so she called the police who took her to a homeless shelter and gave her an address for victims of abuse; and the next morning the petitioner left the shelter and went to the Dollar Store where she knew one other Moroccan person, the manager of the Dollar Store who invited the petitioner to stay with him and his wife and gave her job working at the store. [REDACTED] offers a different timeline of these events, stating it was more than a month after the petitioner's husband left for Morocco that he called a locksmith and he and the petitioner went to her claimed residence and they found her personal belongings in the laundry room. In addition, although the petitioner claims that she was locked out of her house on July 19, 2005, she does not stay overnight in a shelter until July 31, 2005.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

█ indicates that the petitioner could remember past events with details and dates given spontaneously and that there was no confusion about dates. Ms. █ concludes that the petitioner has “become depressed because of the emotional and physical abuse she has suffered at the hands of her husband since March 2005,” and “[s]he understands that if she had been given the opportunity to know her husband for more than one month before marriage, that she might have avoided this emotional traumatic experience.” Ms. █ further notes that: “the petitioner is fearful and depressed and by her admission, her depression began as a direct result of the verbal, physical and emotional abuse she suffered by her husband.” She opines that the petitioner’s symptoms of depression and post traumatic stress disorder are a direct result of the abuse the petitioner suffered by her husband since March 2005 and suggests that the petitioner see a doctor for a physical examination and evaluation for depression.

In a subsequent report dated July 27, 2006, █ adds that she saw the petitioner for a fourth time on July 26, 2006 and reports that the petitioner’s husband had encouraged the petitioner to come to the United States for the third time in March 2005 and that he had promised to support her financially. The additional information provided by █ relates to the petitioner’s belief, as told to █ that the petitioner’s husband actually wanted her to come to the United States the third time (in March 2005) to support him financially. Also in response to the NOID, the petitioner provided an affidavit notarized on November 3, 2006 that is addressed to the Moroccan Consul in Washington DC. In the November 3, 2006 letter, the petitioner complained that her husband wanted her to get a job under the table. The information provided by the petitioner in her initial statement of March 6, 2006, that her husband would not permit her to go outside and work, conflicts with the information that she subsequently provided to █ regarding her husband’s insistence that she get a job and the information she provided in the November 3, 2006 affidavit that her husband wanted her to get a job under the table. The inconsistencies in the petitioner’s statements lessen the evidentiary value of her claims.

The record on appeal includes a May 9, 2007 report authored by █, Licensed Social Worker, who interviewed the petitioner on two occasions, April 26, 2007 for two hours and on May 18, 2007 for 45 minutes to clarify details in written statements submitted by third parties. The crux of █ report is that the petitioner’s husband suffered abuse as a child and as a result his cruelty to the petitioner, although not necessarily premeditated or entirely intentional, stemmed from his abuse as a child. █ does not indicate he has interviewed the petitioner’s husband and apparently draws his conclusions from the information provided by the petitioner and by two individuals who have provided affidavits on appeal. One of the two individuals indicates that her brother knew M-S- when M-S- was a child; and the second individual indicates that she knew M-S- when they were both growing up in Morocco. Both individuals offer conclusions in one paragraph statements. Although █ indicates that he spoke with these two individuals and the petitioner for 45 minutes on May 18, 2007 to clarify their statements, the record does not include the information clarified. Mr. █ finds that the petitioner suffered emotional rather than physical abuse, noting that M-S- restricted the petitioner’s phone calls and socializing; thus making it difficult for the petitioner to provide third party

verification of the abuse. [REDACTED] provides his impression that the petitioner's husband was conflicted about the marriage, presumes that the petitioner and M-S- were in love, and notes that it was very difficult for the petitioner to provide documentation that would be helpful. [REDACTED] concludes that the petitioner's reluctance to provide documentation can be attributed to post traumatic stress disorder. [REDACTED] opines that the post traumatic stress disorder is a direct result of the trauma that she suffered through the hands of her husband.

The petitioner in this matter has provided inconsistent accounts of the alleged emotional abuse and has not provided evidence of physical abuse. The affidavits provided by friends and family do not indicate that they ever witnessed a particular incident of abuse. The affidavits do not include detailed information regarding specific incidents of abuse. The affidavits from the petitioner's friends and relatives confirm that the petitioner stopped communicating with them after March 2005 and that the petitioner's appearance and demeanor greatly changed after her marriage. The affidavits do not, however, provide probative detail establishing that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. Similarly, the reports authored by [REDACTED] and [REDACTED] rely on information provided by the petitioner or in the case of [REDACTED] from third parties that report on the petitioner's husband's childhood and not to direct evidence of abuse. The AAO observes that [REDACTED]'s report is based on presumptions and speculation and not on a verifiable factual foundation. Although the AAO accepts [REDACTED]'s professional training and experience, the record is not sufficiently corroborated and detailed to correlate the husband's childhood experiences to evidence of emotional cruelty of the petitioner. Without an interview of the subject, the reliability of [REDACTED]'s speculation regarding the petitioner's husband is insufficient. Similarly, [REDACTED]'s reports reflect information garnered from the petitioner that is inherently inconsistent. The AAO accepts that [REDACTED] and [REDACTED] provide reports that indicate their diagnoses were based, not simply on the petitioner's statements, but on clinical observations of the petitioner's behavior and affect during the evaluation. The AAO finds, however, that the reports do not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's depression/post traumatic stress disorder. The AAO notes as well that, although [REDACTED] recommended that the petitioner seek medical help for a medical examination and evaluation for depression, the petitioner has not provided evidence that she has done so.

As discussed above, the documentary evidence contained in the record is insufficient to establish the petitioner's claim of abuse. The petitioner has provided inconsistent information relating to emotional and physical abuse. The unresolved discrepancies and inconsistencies regarding significant portions of the petitioner's testimony, as previously discussed, detract from the credibility of the petitioner's description of the alleged abuse. The petitioner's failure to describe in probative detail the verbal and physical abuse and the conflicting testimony diminish the petitioner's claim. Further, the petitioner offers no specific testimonial evidence regarding any alleged abuse perpetrated against her by M-S- which demonstrates that his behavior rose to the level of extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Accordingly, the petitioner failed to establish that she was battered or subjected to extreme cruelty by M-S- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

In addition, beyond the decision of the director, the petitioner has not established that she resided with M-S-. While the short duration of the former couple's joint residence may explain the petitioner's lack of joint

documentation with her husband, the petitioner fails to provide any probative testimonial evidence regarding her residence with her spouse. Neither the petitioner nor any of her affiants discusses the petitioner's residence with her spouse, such as a description of the apartment and its location, their shared belongings or other information which demonstrates a joint residence.

With regard to the photographs of what the petitioner purports to be the belongings that her spouse left in the laundry room of their apartment building, the photographs are undated. Thus, there is no way to verify the authenticity of the photographs. Moreover, the testimonial evidence regarding these belongings contains inconsistencies. The psychological evaluation indicates that the petitioner told [REDACTED] that the petitioner "and the landlord, [REDACTED] indeed found some of her belongings in garbage bags in the storage/laundry room." In her personal statement, however, the petitioner does not mention her landlord's assistance in finding her belongings and instead indicates that because the landlord "was a Moroccan who is friendly with [her spouse] he refused to open the door for me." In addition to the two discrepant statements noted above, the petitioner also submitted a statement from [REDACTED], a friend of the petitioner's, who claimed that he went to the petitioner's apartment on the date that her spouse locked her out of the apartment. [REDACTED] states:

I went with her to the apartment that day, and I called a lock smith. But [REDACTED] did not have I.D. other than her passport and the lock smith refused to open the door . . . I saw that day that some of [the petitioner's] personal belongings were left in the laundry room by her husband. We took pictures to document it.

The petitioner's statement and the report by [REDACTED] contain no mention of either a lock smith being called or of the presence of [REDACTED]. These inconsistencies cast doubt on the petitioner's claims and lessen the evidentiary value of the photographs. *Matter of Ho*, 19 I&N Dec. at 591-92. As referenced above, the note from [REDACTED] is undated, is not on official letterhead, and does not mention any specific address. Upon review of the totality of the evidence in the record, the petitioner has also failed to establish that she resided with M-S-. For this additional reason, the petition may not be approved.

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.