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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 05 204 52800

Office: VERMONT SERVICE CENTER

Date: DEC 10 2008

IN RE: Petitioner: [REDACTED]

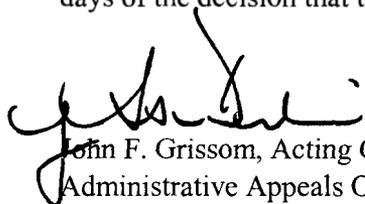
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:
[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


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.

On November 8, 2006, the director denied the petition, finding that the petitioner failed to establish: that she or her child had been subjected to battery or extreme cruelty perpetrated by her spouse; that she is a person of good moral character; and that she entered into the qualifying relationship in good faith.

On appeal, counsel submits a brief and provides copies of documents previously submitted.

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 the Dominican Republic. She married J-L-,¹ a United States citizen, in the Dominican Republic on April 25, 2003 and entered the United States on a K-3 visa on January 9, 2004 with her three-year old son. The record contains evidence that a Form I-130, Immigrant Petition for Relative, Fiance(E), or Orphan, was approved October 21, 2003 but was withdrawn by J-L- on November 5, 2004 and the withdrawal was reaffirmed on July 7, 2005. The record further includes a Notice to Appear issued to the petitioner on April 29, 2005.

The petitioner filed the instant Form I-360 on July 13, 2005. The director issued a request for further evidence (RFE) on November 2, 2005. Upon the petitioner's response requesting additional time to provide evidence in response to the RFE, the director issued a Notice of Intent to Deny (NOID) the petition on March 16, 2006. The director notified the petitioner that the record did not establish: that she or her children 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, through counsel on May 9, 2006. After considering the evidence in the record, including the evidence submitted in response to the NOID, the director denied the petition on November 8, 2006.

On appeal, counsel for the petitioner requests oral argument before the AAO to afford the petitioner the opportunity to apprise the AAO of the nuances of all legal and factual points that may not have been raised in the brief. Counsel asserts that Congress intended United States Citizenship and Immigration Services (USCIS) to liberally interpret the requirements of section 204(a)(1) of the Act. Counsel contends that the director's conclusion that the petitioner and her child were not subjected to abuse and battery perpetrated by J-L-, that the petitioner did not enter into the qualifying relationship in good faith, and that the petitioner is not a person of good moral character, is arbitrary, clearly erroneous, and not supported by reasonable, substantial, and probative evidence when the record is considered as a whole.

Preliminarily, the AAO observes that the regulations provide that the requesting party must explain in writing why oral argument is necessary. Moreover, USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in matters involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved. The petitioner has had ample opportunity to present all legal and factual points in the brief submitted. The written record of proceedings in this matter is considered to fully represent the facts and issues in this matter. Accordingly, the request for oral argument is denied.

Although the AAO bases its decision on the reasoning described herein, the AAO concurs with the finding of the director that the petitioner failed to establish that she or her child was battered or subjected to extreme cruelty by her spouse during their marriage, that she has established she is a person of good moral character, and that she had entered into the qualifying relationship in good

¹ Name withheld to protect individual's identity.

faith.

Battery or Extreme Cruelty

The petitioner indicates on the Form I-360 that her son is included on the Form I-360. Appended to the Form I-360 is the petitioner's June 19, 2005 statement signed under penalty of perjury in support of a fee waiver. In the fee waiver request, the petitioner stated among other things: "[d]uring the time I lived with my husband he was emotionally, mentally, and at times physically abusive to me and my son;" "[i]n May of 2004, my husband told me to leave our house with my son and our unborn child;" "I have been staying with my aunt since I left my house;" and "[i]n June of 2004 I took out a restraining order against my husband because I was fearful that he would try to harm me or my children." The petitioner also provided her September 1, 2004 affidavit signed and notarized on May 24, 2005. The petitioner stated that the "maltreatment" started in March. The petitioner indicated: that her husband's nephew came to live with them for a few months and "started lacking respect for her;" that she tried to maintain her family and a peaceful home without fights or insults but it was too late, "the physical abuse and psychological abuse was out of my control;" and that everything she did bothered her husband and she felt like he hated her and did not know if it was because she was pregnant. The petitioner stated further that she lived with stress, headaches, nervousness and low blood pressure and was afraid of losing her baby. The petitioner reported that her husband told her that they could not continue being together and she must leave. The petitioner stated that she left the house with her minor child on May 6, 2004 to live with her aunt. The petitioner reported that her husband would call her aunt's house and state that he was going to have the petitioner deported and "[h]e would also maltreat me psychologically after I left our home."

The petitioner also included:

- A copy of a restraining order issued against J-L- on June 23, 2004 and extended on July 7, 2004 to September 7, 2004 by the Lawrence District Court, Massachusetts.
- A letter signed by [REDACTED] of the Greater Lawrence Family Health Center, reporting on the petitioner's visit on June 4, 2004. The letter indicates the reason for the visit is "Depression Intervention" and that the patient (the petitioner) reported "a history of emotional/mental abuse. Emotional/mental abuse includes ignoring the patient's feelings. Emotional/mental abuse includes humiliating the patient in public. Emotional/mental abuse includes continually criticizing, yelling and/or insulting. By husband and his family."
- A second letter signed by [REDACTED], of the Greater Lawrence Family Health Center, reporting on the petitioner's visit on September 27, 2004. Ms. Larrache indicated the reason for the visit was for the petitioner's four-year old son's physical exam. [REDACTED] noted that the petitioner had questions

regarding child support and that the petitioner was getting a divorce from the baby's father.²

- A certificate dated September 23, 2004 issued to the petitioner for the completion of a twelve-week Domestic Violence Support Group.
- A June 10, 2005 letter signed by [REDACTED] of Catholic Charities. [REDACTED] certifies that the petitioner has been an ongoing client of the Latino Outreach Office of Catholic Charities since February 2004. [REDACTED] notes that the petitioner first came in 2004 for the pregnancy of her second child and again in April 2004 due to a situation of domestic violence, whereupon she referred the petitioner to the Women's Resource Center for appropriate services. [REDACTED] reports: "After a period of time and seeing the situation go from bad to worse, [the petitioner] decided that she had to leave the house she shared with her husband."
- A May 24, 2005 letter signed by [REDACTED], Director of Domestic Violence Program of Supportive Care, Inc. [REDACTED] indicates that the petitioner has been receiving services since June 16, 2004 and that the petitioner completed the support group meetings on September 24, 2004.
- A May 27, 2005 letter signed by [REDACTED] who indicates that she is a health educator, financial literacy facilitator and administrator at Northern Essex Community College's HUD/Community and Enterprise Development Center. [REDACTED] indicates that she has known the petitioner since spring of 2004 and "[a]t that time [the petitioner] was pregnant and going through a separation from her alleged abusive partner." [REDACTED] notes that the petitioner was under lots of pressure and stress being pregnant and having to experience an abusive relationship.
- A May 27, 2005 letter signed by [REDACTED], Shelter Coordinator who advises that the petitioner is currently attending a weekly support group to resolve her domestic violence issues.

In response to the NOID, the petitioner submitted her affidavit notarized on May 9, 2006. In the affidavit, the petitioner relates several incidents, including: a time in March 2004 when J-L- took her child's clothes, ripped up her child's T-shirt, and put the clothes in a trash bag, saying he did not want trash in the house; a time in March 2004 when J-L- took a juice box from his daughter (that had been purchased by the petitioner) and threw it "violently" in the trash can saying it was trash that the petitioner had bought and would make her (his daughter) fat; a day in March 2004 when J-L- grabbed the petitioner's arm and threw her on the bed, called her names and her child names; J-L- regularly slapping her child on the back of the head when J-L- was angry; and a time when J-L- hit her child on the bottom and sent him to his room when the child took food from the refrigerator without J-L-'s

² The petitioner in this matter has a minor child from a previous relationship, a child that is included in this petition. The petitioner was also pregnant when entering the United States and had a child born in the United States on September 24, 2004. Although the child was born during the petitioner's marriage to J-L-, J-L- has been determined not to be the biological father of the child.

permission, although her child had her permission. The petitioner reports that J-L- decided to break off the relationship and on the petitioner's birthday in 2004 told her it was time for her to leave the house and go back to the Dominican Republic. The petitioner states that she moved to her aunt's house with her child and that J-L- would call her one or two times a day and tell her he was going to have her deported. The petitioner reports that when J-L- would not stop calling her she decided to pursue a restraining order against him. The petitioner, through her attorney, provided evidence that the restraining order, referenced above from Lawrence District Court, dated June 23, 2004 had been extended on July 7, 2004, September 7, 2004, and expired on June 23, 2005. The copy of the June 23, 2004 request for a restraining order also includes the petitioner's statement that she had to leave her home "because [J-L-] would fight with [her] and push [her] around[,] grab [her] and was throwing [her] around breaking stuff in the house becoming very violent. I am afraid of him and want him away from me." The restraining order affidavit does not include information regarding threatening phone calls. The record also includes J-L-'s July 6, 2004 response to the restraining order denying the petitioner's allegations and alleging that the petitioner abandoned their home even though he begged her not to leave.

The record also includes the affidavit of [REDACTED] notarized May 9, 2006. [REDACTED] declares: he is the petitioner's first cousin; he has known the petitioner's husband, J-L- for about nine years; after the petitioner came to the United States, J-L-'s personality changed; the petitioner told him that J-L- would yell and scream at her son, would complain when the child ran and played in the house because he did not want to be disturbed, and did not like it if the child would go to the kitchen to get snacks; and he never saw J-L- hit the child but did see him yell at the child and put him in a bedroom behind closed doors. [REDACTED] repeats incidents outlined in the petitioner's affidavit and indicates that the petitioner had told him of these incidents. [REDACTED] indicates that J-L- told him in May 2004 that he wanted to break up with the petitioner, even though she was pregnant, and he believed that J-L-'s family was pressuring him to break up with the petitioner. Mr. [REDACTED] declares that he talked with the petitioner later on the day of the break-up and the petitioner wanted to return to the Dominican Republic but he encouraged her to stay in the United States and live with his mother.

The record further includes the Intake Assessment Interview Form prepared by Supportive Care, Inc. Domestic Violence Program, dated June 18, 2004 from an interview of the petitioner. The assessment form shows checked boxes and interview notes indicating: that the abuse began about three months ago; that the petitioner's child had been injured physically during violence between the petitioner and her partner; that the petitioner had been with her partner (J-L-) for four months; that he had never harmed her physically; that he tried to isolate her and monitor her behavior; that he tried to hurt her emotionally while she was pregnant; that she has been hospitalized or received medical attention because of his actions; and that he frightens her to gain control of her; he has angry outbursts; and he has hit or physically hurt her children.

The record also includes: the birth certificate of a child born on September 24, 2004 in Boston, Massachusetts that names the petitioner and J-L- as the parents; a test of this child's paternity dated

December 9, 2004 reporting J-L- is not the child's biological father; and a December 16, 2004 letter to J-L- informing him that the child support division will recommend that the complaint for child support filed against him be dismissed and the matter closed.

On appeal, the petitioner provides a copy of a prenatal intake assessment dated March 8, 2004 prepared by Greater Lawrence Family Health Center, Inc. The report is signed by a registered nurse and indicates that the petitioner described her mood as happy.

Upon review of the evidence in the record regarding abuse, the AAO finds that the petitioner has failed to provide detailed, consistent information regarding abuse perpetrated against her or her child included in the petition. The petitioner has alleged that her husband was emotionally, mentally and at times physically abusive to her and "the physical abuse and psychological abuse was out of my control," but she does not provide the required detail to substantiate these allegations. When asked to provide more specific detail in the NOID, the petitioner reports on an incident in March 2004 when J-L- grabbed her arm and threw her on the bed. The copy of the petitioner's restraining order request provided on appeal also indicates that J-L- would fight with her and push her around, grab her and throw her around breaking stuff in the house and becoming very violent. Other than these general statements, the petitioner does not allege any specific incidents involving physical violence against her. In the intake assessment form when discussing the relationship with her spouse, the petitioner indicates that her husband had never harmed her physically. The AAO notes that the petitioner also indicated on the assessment interview form that she had to be hospitalized or had to receive medical attention because of J-L-'s action. However, the record does not contain any documentary evidence of hospitalization or medical treatment relating to physical injuries. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The inconsistency in the petitioner's statements regarding physical abuse and the lack of documentary evidence to substantiate the claimed hospitalization or medical treatment diminishes the evidentiary value of her statements. 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). The record is insufficient to establish that the petitioner suffered battery perpetrated by J-L- against her.

Regarding the petitioner's allegations of emotional, psychological, and mental abuse perpetrated by J-L-, the petitioner also provides general statements. The petitioner first reports that J-L- verbally abused her and her son and that matters became worse when her husband's nephew came to live with them. The petitioner does not provide details of the claimed verbal abuse by J-L-. In response to the NOID, the petitioner adds two incidents of J-L-'s behavior, including ripping up a shirt and putting clothes in a trash bag saying he did not want trash in his house and throwing a juice box, given to his daughter by the petitioner, in the trash can in a "violent" manner. The petitioner also reported that J-L- called her disgusting names. These incidents fail to establish that the petitioner was the victim

of any act or threatened act of physical violence or extreme cruelty or that J-L's non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. Similarly, the petitioner's claim that after she left their home, J-L- repeatedly called her aunt's house threatening to have her deported do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

The AAO also notes that the petitioner has provided inconsistent statements regarding the circumstances of leaving J-L- and the reason for the restraining order. In her statements provided in support of the Form I-360, the petitioner indicated that her husband told her she had to leave their home. Her cousin, [REDACTED] reported in his affidavit that J-L- told him that he wanted to break up with the petitioner. The petitioner indicated, however, to [REDACTED] of Catholic Charities that after a period of time and seeing the situation go from bad to worse, she decided that she had to leave the house she shared with her husband. Similarly, when requesting the restraining order against her husband the petitioner reported to the court authorities that she had to leave her home "because [J-L-] would fight with [her] and push [her] around[,] grab [her] and was throwing [her] around breaking stuff in the house becoming very violent." The AAO observes that the petitioner indicates in her September 1, 2004 affidavit that J-L- "would also maltreat me psychologically after I left our home" but does not describe this "maltreatment" in the restraining order. The inconsistencies in the petitioner's statements to USCIS, the Lawrence District Court, and third party organizations undermine the veracity of the statements provided. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

The AAO has reviewed the letter prepared by Mildred Larrache, of the Greater Lawrence Family Health Center, regarding the petitioner's visit on June 4, 2004. [REDACTED] reports a history of emotional and mental abuse and describes the abuse as ignoring the patient's feelings, humiliating the petitioner in public, and criticizing, yelling and/or insulting the petitioner. [REDACTED] however, provides no chronological, clinical, or substantive details of the abuser's alleged abuse and does not establish a causal connection between the abuse and its effects on the petitioner. Contrary to counsel's assertion on appeal that the "constant verbal abuse caused the petitioner-appellant who was pregnant at the time to suffer from health problems such as stress headaches, nervousness and low blood pressure," the AAO finds no information in the record establishing the petitioner's health problems, other than the petitioner's statement and a March 8, 2004 pregnancy intake report where the petitioner described her mood as happy.

The AAO has also reviewed: the June 10, 2005 letter signed by [REDACTED] of Catholic Charities indicating the petitioner first came in 2004 for the pregnancy of her second child and again in April 2004 due to a situation of domestic violence; letters from [REDACTED] and [REDACTED] indicating that the petitioner had been receiving services and attending a support group; and a letter signed by [REDACTED] who states that she has known the petitioner since the spring of 2004 and

“[a]t that time [the petitioner] was pregnant and going through a separation from her alleged abusive partner.” Again, these letters do not provide details of any alleged incident of verbal or physical abuse committed by J-L- against the petitioner nor do the letter-writers describe the physical or emotional state of the petitioner. The individuals provide only general statements of alleged abuse and note that the petitioner has attended and completed a support group course on the issue of domestic violence. The AAO finds these letters lack probative evidentiary value as the letter-writers do not provide detail of alleged incidents, do not expand upon their conclusions that the petitioner was in an “abusive relationship,” and do not relate specific incidents of witnessing emotional or physical abuse.

The AAO has further reviewed the affidavit of [REDACTED], who reports only that he had been told of the incidents referenced in the petitioner’s statements. He does not indicate that he has witnessed specific incidents of abuse against the petitioner and initially encouraged her to remain with her husband. The affidavit does not contain probative information establishing J-L-’s alleged verbal or physical abuse against the petitioner.

The petitioner’s claims that her home situation became worse when her husband’s nephew moved in and that the nephew lacked respect for her, called her and her son names, also lack specific detail. Moreover, the petitioner has not claimed that the nephew’s actions were instigated or were otherwise a proximate cause of J-L-’s alleged abuse. Both the statute and the regulation require that the abuse be perpetrated against the petitioner *by his or her spouse*, not a third party. See Section 204(a)(1)(A)(iii)(I)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb), 8 C.F.R. § 204(c)(1)(vi).

Turning to the actions of J-L- against the petitioner’s child, the petitioner has likewise failed to establish the requisite battery or extreme cruelty against her child. The AAO acknowledges the petitioner’s claim that J-L- regularly slapped her child on the back of the head when he was angry, that he hit the child on the bottom and sent the child to his room, and called the child names. These claims, if true, are abhorrent methods of disciplining a small child. The AAO observes, however, that the petitioner brought her child to the Greater Lawrence Family Health Center on September 27, 2004 for a physical exam. The report of that visit indicates that the petitioner was concerned about child support and reported that she was getting a divorce but does not indicate the petitioner’s concern regarding any physical or emotional abuse suffered by her child. The AAO further observes that the petitioner’s cousin, [REDACTED] in his affidavit declares that he never saw J-L- hit the child but did see him yell at the child and put him in a bedroom behind closed doors. The record does not include sufficient detailed information regarding the claimed abuse of the child to enable an evaluation of whether abuse took place or if so, whether J-L-’s alleged actions constituted battery or extreme cruelty as envisioned in the Act.

The AAO acknowledges counsel’s assertions on appeal and claim that the constant verbal abuse of the petitioner and her son caused the petitioner to suffer health problems such as stress, headaches, nervousness, and low blood pressure. However, again the record does not include a medical evaluation of the petitioner’s health problems or a diagnosis that any of the petitioner’s medical

problems resulted from abuse. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO also acknowledges counsel's contention that Congress "dictated that USCIS and EOIR apply a liberal 'any credible evidence' to all Violence Against Women Act applications." However, in this instance the petitioner has provided general statements that in and of themselves do not establish credibility and are sufficiently vague as to not lend themselves to evaluations regarding credibility. In addition to the generality of most of the information in the record, the petitioner has also submitted inconsistent information. When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty. The AAO declines to accept generic information with little chronological timeline, no medical evaluations, and inherent inconsistencies to establish eligibility for this benefit. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that she or her child has been subjected to battery or extreme cruelty perpetrated by her spouse in order to meet her burden of proof. In this matter, she has failed to do so.

As discussed above, the documentary evidence contained in the record is insufficient to establish the petitioner's claims of abuse. The petitioner's failure to describe in probative detail the verbal and physical abuse and the conflicting testimony diminish her claim. Further, the petitioner offers no specific testimonial evidence regarding any alleged abuse perpetrated against her or her child by J-L- 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 has failed to establish that she or her child were battered or subjected to extreme cruelty by J-L- during the petitioner's marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The petitioner has provided police clearances for Massachusetts, the area in which she resided from January 9, 2004 to the date she filed the petition on July 13, 2005. She has also provided two letters of reference, both which include information regarding her character while residing in the Commonwealth of Massachusetts in the United States. The record does not include police clearances or other evidence from the petitioner's prior residence in the Dominican Republic. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. As the petitioner has not provided evidence or clearances from the Dominican Republic, where she resided until her entry into the United States, a time less than three years prior to filing the petition, the AAO is precluded from

determining she has established good moral character. Accordingly, the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Good Faith Entry into Marriage

At the time of filing, the petitioner submitted her marriage certificate showing her marriage to J-L- on April 25, 2003. In the March 16, 2006 NOID, the director requested documentation to show that the petitioner had married J-L- in good faith. In response, the petitioner provided photographs of the wedding, a subsequent honeymoon, and vacation pictures purportedly taken in May 2003. The petitioner also submitted her cousin's, Juan Castillo, May 9, 2006 affidavit. [REDACTED] declares that he introduced the petitioner to J-L- and was J-L-'s best man at the wedding. [REDACTED] indicates that on one of J-L-'s visits to the Dominican Republic he introduced J-L- to the petitioner in 1998 or 1999. [REDACTED] further declares that it seemed that they loved each other and that he has no doubt it was a real marriage on both sides. The record includes a photograph with a handwritten caption indicating that it was provided by [REDACTED] and that it shows the petitioner, her son, and J-L- in the United States after their marriage. The photograph in and of itself does not reveal the location of the photograph.

The petitioner also provided her notarized statement wherein she declares that she met J-L- in the Dominican Republic in 1998 through her cousin and that she and J-L- talked to one another in 1998 and 1999 but then lost contact. The petitioner reports that she met J-L- again in May 2001 at his father's funeral and they re-established their relationship. The petitioner indicates that J-L- proposed in December 2002, they were married on April 25, 2003, lived together for a month in the Dominican Republic, and then J-L- returned to the United States to work. The petitioner states that she and J-L- met with a United States immigration officer in December 2003, her visa was approved, and she entered the United States on January 9, 2004 to live with J-L-. The petitioner observes that when she entered the United States in January she did not know she was already pregnant with her daughter who was born September 24, 2004. The record includes no further details regarding the petitioner and J-L-'s courtship, her feelings for her husband, or any other probative information to demonstrate her reasons for marrying J-L- much less that she entered into her marriage in good faith.

Although the petitioner has submitted an affidavit from her cousin who testifies that he introduced the petitioner to J-L- and he believed it was a real marriage, the affidavit does not provide probative details of the courtship of the couple or their subsequent interactions during the several months the petitioner allegedly lived with J-L-. Moreover, the affidavit does not establish the petitioner's intent and good faith in entering the marriage. Similarly, the photographs provided establish a wedding and a vacation took place but do not document the petitioner's feelings or reasons for marrying J-L- and do not provide evidence of the requisite intent that would establish that the entry into the marriage was made in good faith. The petitioner's statement, likewise, does not discuss the reasons for the marriage or otherwise provide substantive detail regarding the circumstances leading to the marriage. The petitioner's infidelity, a few months after her marriage, also undermines the

petitioner's intent to enter into the marriage in good faith. There are no probative details regarding the petitioner's initial relationship with J-L- and their subsequent interactions in the Dominican Republic or in the United States that allow a conclusion that the petitioner entered into the marriage in good faith. The record is insufficient to establish that the petitioner entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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.