U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 30 2008

EAC 05 221 50273

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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and treated the subsequent untimely appeal as a motion to reopen and affirmed his prior decision. 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 finding that the petitioner failed to establish that she resided with her spouse, that she was battered or subjected to extreme cruelty by her spouse during their marriage, that she is a person of good moral character and that she entered into her marriage in good faith.

The petitioner submits a timely appeal with additional evidence.[1]

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

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[1] An attorney that has been suspended from the practice of law in Massachusetts by the Massachusetts Board of Bar Overseers as of June 4, 2007 filed the petitioner's appeal. *See* Massachusetts Board of Bar Overseers of the Supreme Judicial Court, Attorney Status Report, accessed at *http://massbbo.org* (October 17, 2008). The attorney has also been suspended from practice of law before the Executive Office for Immigration Review (EOIR) as of July 20, 2007. *See* EOIR List of Suspended and Expelled Practitioners, accessed at *http://www.usdoj.gov/eoir/profcond/chart.htm.* Accordingly, the attorney may not be recognized in these proceedings and the petitioner will be deemed self-represented. *See* 8 C.F.R. §§1.1 (f), 292.1(a)(1).

(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 document 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 or 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.

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

native and citizen of Uganda who entered the United States on April 11, 2002 as a B-2 nonimmigrant visitor. On August 23, 2003, the petitioner married D-A-,[2] a United States citizen, in California. The petitioner filed the instant Form I-360 on August 1, 2005, and a corresponding Form I-485, Application to Adjust Status, on the same date. On November 14, 2005, the director issued a Request for Evidence (RFE) of the requisite residence, battery or extreme cruelty, good moral character and good faith marriage. On March 3, 2006, the director issued a Notice of Intent to Deny (NOID) the petition, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish her claims of residence, abuse, good moral character, and good faith marriage. The director denied the petition on June 19, 2006 finding that the petitioner failed to establish that she resided with her spouse during their marriage, that she was battered or subjected to extreme cruelty by her spouse during their marriage, that she is a person of good moral character, and that she entered into her marriage in good faith. The petitioner filed an untimely appeal on August 31, 2006 which the director treated as a motion to reopen pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2). In a decision dated November 20, 2006, the director reaffirmed his previous decision. On December 14, 2006, the petitioner filed a timely appeal with additional evidence relating to her divorce from D-A-. As will be discussed, we concur with the determination of the director and find that the petitioner has failed to establish her eligibility on appeal.

Residence

The petitioner submitted contradictory evidence of her residence during her marriage. On the Form I-360, the petitioner claims that she resided with her spouse from June 2003 to February 2005, and that they last resided together at [redacted] in Van Nuys, California. The petitioner also listed the [redacted] address on her Form G-325A, Biographic Information, signed on May 15, 2005 and indicated that she resided at that address from June 2003 until May 2005. In addition, the petitioner submitted the following evidence which also listed the [redacted] address as her residence: an identity card issued on March 16, 2004; SBC phone company statements addressed to the petitioner and D-A-, dated March 18, 2004 and May 17, 2004; a Cingular wireless phone statement addressed to the petitioner dated June 22, 2004; Southern California Gas Company statements addressed to the petitioner and D-A-, dated February 3, 2004, March 3, 2004, May 17, 2004 and July 16, 2004; Los Angeles Department of Water and Power statements addressed to the petitioner, dated June 29, 2004 and August 27, 2004; and a Washington Mutual bank statement addressed to the petitioner and D-A-, dated August 20, 2004.

However, on the petitioner's Complaint for Divorce filed in April 27, 2006, the petitioner claimed that she last resided with D-A- at the [redacted] address on May 20, 2004, nearly one year prior to the date claimed on the Form I-360. Moreover, the petitioner also submitted copies of her 2004 Form W-2s from Angel Homecare LC and from HealthBridge Management addressed to her at [redacted] in Lowell, Massachusetts and from Emeritus Corporation and Kindred Healthcare Operating, Inc. addressed to her at [redacted], in Lowell Massachusetts.

[2] Name withheld to protect individual's identity.

The inconsistencies contained in the record between the petitioner's claim of residence with D-A- and the contradictions in her documentary evidence cast doubt on the petitioner's claims. 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). Despite being given the opportunity by the director in his RFE and NOID to resolve the inconsistencies, the petitioner submitted no further probative information regarding her claimed residence or explanation for the inconsistencies noted in the record. The petitioner also failed to submit any further testimony or documentation on appeal in support of her claim of residence and to clarify the inconsistencies in the record.

Based upon the unresolved inconsistencies in the record, the petitioner has failed to meet her burden of proof and to establish that she resided with D-A- spouse during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

With her initial filing, the petitioner submitted a statement in which she claims that D-A- had the wrong type of friends, had no respect for her and did not care about their sexual relationship. The petitioner further claims that D-A- spent a lot of time with his friends, was too lazy to go to work, was short tempered, yelled at her, and disrespected her in public. The petitioner also claims that D-A- threatened to hit her when he got drunk, depended on her for money, and became a nuisance and a burden to her. The petitioner does not, however, provide any specific information or discuss any particular incident in probative detail. In addition to her personal statement, the petitioner submitted a letter from Pastor [redacted], dated April 14, 2005. In his letter, Rev. [redacted] discusses the "plight" of the petitioner in her marriage and explains that the petitioner approached him to pray for her regarding the "problems" she was experiencing in her marriage, including the claim that she was "molested" by D-A- and that he threatened to beat her. Like the petitioner's statement, however, [redacted]'s letter contains only general statements about the alleged abuse and provides no probative details regarding any specific incident of battery or extreme cruelty.

In response to the director's RFE, the petitioner submitted a second statement, and a statement from her uncle, [redacted]. In her second statement, dated February 6, 2006, the petitioner claims that D-A- threatened her life, forcefully took money from her, held her by the throat, and threatened to call immigration and the police on her if she complained. In addition, the petitioner claims that D-A- refused to accompany her to immigration interviews, refused to contribute to payment of common bills, would yell at her and scold her for no reason, became involved with street gangs and drug users and was constantly on the run. The letter from the petitioner's uncle [redacted], also dated February 6, 2006, indicates that although he never met D-A-, that the petitioner informed him of D-A-'s strange behavior. Mr. [redacted] then recounts what the petitioner purportedly told him, such as that D-A- abused and yelled at her, depended on her for money, and

was rude and disrespectful.

In support of the appeal filed on August 3, 2006, the petitioner submitted a copy of her Complaint for Divorce in which she requested that a divorce be granted to her because D-A- committed "cruel and abusive treatment" pursuant to section 208(1)(b) of the General Laws of Massachusetts. However, the petitioner's complaint included no detailed allegations or statement of facts regarding D-A-'s allegedly cruel treatment. Rather, the complaint stated only that "at divers [sic] times and dates [D-A-] committed physically and mentally abusive acts" against the petitioner.

In support of the instant appeal, the petitioner submits a copy of her Judgment of Divorce Nisi entered on October 19, 2006 by the Probate and Family Court Department of the Trial Court of Massachusetts. However, we cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). We note that even if the judgment had been entered before the petition was filed, because the judgment was based upon unspecified accounts of abuse on unidentified occasions, the judgment would not sufficiently establish the petitioner's claim of battery or extreme cruelty.

As described above, the petitioner's claims and those submitted on her behalf do not contain sufficient probative information to establish that she was battered or subjected to extreme cruelty by D-A- during their marriage. In her statement, the petitioner vaguely refers to one instance where D-A-held her neck and other unspecified occasions where he threatened her with physical harm and to call immigration. As it relates to the claimed extreme cruelty, the testimony generally refers to D-A- as being rude, taking the petitioner's money, scolding the petitioner and being involved with the wrong group of friends. The claims regarding D-A-'s actions 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 and do not demonstrate that his behavior was accompanied by any coercive actions or threats of harm that were aimed at ensuring dominance or control over the petitioner. Accordingly, the weight of the relevant evidence does not satisfy the petitioner's burden of proof. We, therefore, find that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

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 a police clearance or criminal background check 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. The director specifically notified the petitioner of these regulatory requirements in the RFE and the deficiency of the petitioner's evidence in the NOID.

Although the petitioner submitted a personal statement in which she claims that she is "a young lady of good moral character," and statements from friends who attest to her being an asset to the community, this evidence does not take the place of the required primary evidence. Therefore, as the petitioner has failed to submit an affidavit regarding her criminal history and police clearances or criminal background checks from California and Massachusetts where the petitioner appears to have resided during the three-year period prior to filing this petition, she has failed to sustain her burden of proof and 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

The petitioner submitted the following evidence relevant to her claim that she entered into marriage with her spouse in good-faith:

- The petitioner's statements;
- A statement from the petitioner's uncle, [redacted], dated February 6, 2006;
- 13 photographs of the petitioner and her spouse;
- A copy of a statement from Washington Mutual bank;
- An application to reinstate life insurance policy from New York Life Insurance Company of America;
- Copies of bills from Cingular;
- Copies of telephone bills from SBC phone company;
- A copy of a bill from the City of Los Angeles Municipal Services;
- Copies of bills from Los Angeles Department of Water and Power;
- Copies of bills from Southern California Gas Company; and
- A copy of the petitioner's Form 1040 Income Tax Return for 2004.

In her initial statement, the petitioner generally claims that she fell in love with D-A- and they got married five months later. In her February 6, 2006 statement, the petitioner claims that she married D-A- because she loved him and thought they would share a good life together. In her April 26, 2006 statement, the petitioner merely states that she entered into her marriage in good faith. The petitioner provides no specific details regarding how she met D-A-, their courtship, their relationship prior to the marriage, or any other probative information to establish that she intended to establish a life with D-A-. Similarly, the statement from [redacted] indicates that he never met D-A- and generally states that the petitioner moved to Los Angeles to live with D-A- in good faith. His letter, however, offers no further probative information to support the petitioner's claim of a good faith marriage.

The majority of the petitioner's photographs appear to have been taken at her wedding ceremony. The remaining photographs are undated and uncaptioned and contain no description of the event depicted or other details to establish the relevance of the photographs to the petitioner's claim of a good faith marriage. Therefore, although the petitioner's photographs document that the petitioner

and D-A- were together at a particular place and time, they are of little probative value regarding the petitioner's intent in marrying him. Similarly, although the petitioner submitted her 2004 federal tax returns, the returns were filed separately from D-A- and further, the petitioner has provided no evidence to demonstrate that the returns were actually filed. Likewise, the bills from Cingular, the city of Los Angeles Municipal Services and the Los Angeles Department of Water and Power are addressed to the petitioner only. Moreover, the petitioner's insurance policy from the New York Life Insurance Company has lapsed and although the petitioner submitted a copy of an unsigned application to reinstate the policy, the record does not contain any evidence to show that the policy was renewed or is otherwise current. As such, the documents are of little probative value regarding the petitioner's claim of a good faith marriage. The remainder of the documentary evidence consists of bills and statements that are listed in both the petitioner's and D-A-'s names. However, because the bills were issued during the times that the petitioner's actual residence was in question, we do not find these documents carry sufficient weight to meet the petitioner's burden of proof.

As discussed above, the scant testimonial evidence regarding the petitioner's relationship with D-A- prior to their marriage or her feelings and intent in marrying him is not sufficient to establish the petitioner's claim of a good faith marriage. The remaining documentary evidence is either not evidence of shared responsibility or was issued to the petitioner and D-A- at addresses the petitioner has failed to demonstrate that she and D-A- actually resided. Accordingly, the petitioner has failed to establish that she petitioner entered into marriage with D-A- in good faith, as required by section 204(a(1)(iii)(I)(aa) of the Act.

Beyond the director's decision, the record also fails to demonstrate that the petitioner had a qualifying relationship with D-A- and was eligible for immediate relative classification based on such a relationship.

The Petitioner Failed to Establish A Connection Between the Abuse and Her Divorce

Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act requires that a self-petitioner who has divorced her abusive spouse demonstrate that the divorce occurred within two years of the petition filing date and that there was a connection between the divorce and the former spouse's battery or extreme cruelty. While the petitioner was divorced from D-A- within the two years preceding the filing of this petition, as discussed above, the petitioner has failed to establish that she was battered or subjected to extreme cruelty by D-A-. As such, she is unable to demonstrate a connection between her divorce and D-A-'s alleged abuse. Moreover, the record reflects that after her divorce from D-A, the petitioner met and married another individual, T-D-,[3] during the pendency of this petition.

The Act Does Not Permit Remarriage of the Self-Petitioner Prior to the Approval of the Petition

I. History of Abused Spouse Status

[3] Name withheld to protect individual's identity.

1. 1994 Amendments to Section 204 of the Act.

Congress first granted an abused spouse the ability to self-petition in 1994, when it enacted the *Violent Crime Control and Law Enforcement Act of 1994*, Pub. L. 103-322, 108 Stat. 1796 (Sep. 13, 1994). Section 40701, located in Subtitle G, amended section 204 of the Act to permit abused spouses and children of United States citizens or lawful permanent residents to file petitions for immigrant status. Congress observed that:

> Under current law only the United States citizen or lawful permanent resident spouse is authorized to file a relative petition, and this spouse maintains full control over the petitioning process. He or she may withdraw the petition at any time for any reason. The purpose of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse.[4]

Under the amended section 204 of the Act, an abused alien spouse would no longer have to rely on his or her abusive U.S. citizen or lawful permanent resident spouse to petition for immigrant status on her behalf.

On March 26, 1996, the legacy Immigration and Naturalization Service (INS), predecessor to Citizenship and Immigration Services (CIS), promulgated an interim rule to implement the changes mandated by section 40701 of the *Violent Crime Control and Law Enforcement Act of 1994*.[5] The rule outlined the various provisions for abused spouses of U.S. citizens and lawful permanent residents to file a self-petition. In explaining the interim rule, the INS stated:

> The rule further provides, however, that a pending spousal self-petition will be denied or an approved self-petition will be revoked if the self-petitioner chooses to remarry before becoming a lawful permanent resident. By remarrying, the self-petitioner has established a new spousal relationship and has shown that he or she no longer needs the protections of section 40701 of the Crime Bill to equalize the balance of power in the relationship with the abuser.[6]

The implementing regulatory language at 8 C.F.R. § 204.2(c)(1)(ii) states:

> The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death,

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[4] *See* H.R. Rep. 203-395, available at 1993 WL 484760, p. 41.
[5] *See* 61 Fed. Reg. 13061 (Mar. 26, 1996), available at 1996 WL 131508.
[6] 61 Fed. Reg. at 13063.

> or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition. The self-petitioner's remarriage, however, will be a basis for the denial of a pending self-petition.

Finally, the interim rule at 8 C.F.R. § 205.1(a)(3)(i)(E) established that approval of a self-petition made under section 204 of the Act is automatically revoked as of the date of approval:

> [u]pon the remarriage of the spouse of an abusive citizen or lawful permanent resident of the United States when the spouse has self-petitioned under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act . . . .

Thus, as early as 1996, section 204 of the Act was interpreted as requiring a self-petitioning abused spouse to be married at the time of filing and not remarried prior to becoming a lawful permanent resident.[7]

2. 2000 Amendments to Section 204 of the Act.

In 2000, Congress further amended section 204 of the Act by enacting the *Victims of Trafficking and Violence Protection Act of 2000* (VTVPA), Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000). Division B of that Act contained the *Violence Against Women Act of 2000* (*VAWA 2000*). Pursuant to *VAWA 2000* and the *VTVPA*, seven groups of abused aliens became eligible to self-petition for classification as immediate relatives or preference immigrants under sections 204(a)(1)(A)(iii) or (iv), or 204(a)(1)(B)(ii) or (iii) of the Act.[8]

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[7] In a policy memo from T. Alexander Aleinikoff, Executive Associate Commissioner, entitled "Implementation of Crime Bill Self-Petitioning for Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents," (April 16, 1996), the INS Office of Programs emphasized the regulatory requirement that "[a] pending spousal self-petition will be denied or the approval of a spousal self-petition revoked, however, if the self-petitioning spouse remarries before he or she becomes a lawful permanent resident."

[8] Group 1 — abused alien spouses of U.S. citizens or lawful permanent residents (LPRs). Group 2 — alien spouses whose children are abused by the U.S. citizen or LPR spouse. Group 3 – alien children abused by their U.S. citizen or LPR parent. Group 4 – divorced abused spouses of U.S. citizens or LPRs who demonstrate a connection between the abuse suffered and the divorce and who file a petition within 2 years of the divorce. Group 5 – abused widowed spouses of U.S. citizens who file a petition within 2 years of the date of U.S. citizen's death. Group 6 – abused alien spouses of former U.S. citizens or LPRs who lost their immigration status within the last two years related to or due to an incident of domestic violence. Group 7 – abused alien children of former U.S. citizens or LPRs who lost their immigration status within the last two years related to or due to an incident of domestic violence. *See* VAWA §§ 40701-02; VTVPA §§ 1503(b) and (c).

The Battered Immigrant Women Protection Act of 2000 is contained within the VTVPA.[9] In VTVPA § 1502(a), Congress made three findings. First, it found that the goal of *VAWA 1994* was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships.[10] Second, it found that providing abused immigrant women and children with protection from deportation freed them to cooperate with law enforcement and prosecutors, without fear that the abuser would retaliate by withdrawing or threatening to withdraw, access to an immigration benefit under the abuser's control.[11] Third, Congress found there are several groups of abused women and children who do not have access to the immigration protections of VAWA 1994.[12] VTVPA §§ 1503(b) and (c) amended section 204 of the Act to permit an abused alien spouse, who had already terminated his or her marriage to the abusive U.S. citizen or lawful permanent resident, to self-petition, provided that the alien demonstrated a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the spouse.[13] Prior to this amendment, a self-petitioning abused spouse was required to be married to the abusive spouse at the time of filing the petition.

Congress also amended section 204(h) of the Act to permit an abused self-petitioning spouse *whose petition had already been approved* to remarry without having the approval of his or her petition revoked. Under the maxim of statutory construction, *expressio unius est exclusio alterius,*[14] the fact that Congress specifically addressed the issue of remarriage in the context of revocations but did not address it elsewhere for unadjudicated petitions means that Congress did not intend to change any other provisions related to remarriage. Under section 204(h) of the Act, remarriage of the alien after approval of the petition would not serve as the sole basis for revocation of the petition. Congress did not refer to the issue of remarriage in the other provisions of section 204 pertaining to abused spouses. Consequently, the director's interpretation that section 204 does not permit the remarriage of the abused spouse before his or her petition is approved was reasonable given that Congress only provided that *remarriage after approval* would not disqualify the abused spouse. The inclusion of remarriage in section 204(h) of the Act as a non-disqualifying factor, after petition approval, strongly suggests that remarriage is a disqualifying factor prior to petition approval. The prohibition against using remarriage as a basis for revoking an approved petition is likely based on a desire for finality. Once the abused spouse made a sufficient showing that her self-petition should be granted, and such petition was granted, there would not be any purpose in requiring the abused spouse to delay remarrying.[15]

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[9] VTVPA § 1501.
[10] VTVPA § 1502(a)(1).
[11] VTVPA § 1502(a)(2).
[12] VTVPA §1503(a)(3).
[13] Sections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.
[14] "Mention of one thing implies exclusion of another. When certain persons or things are specified in law . . . an intention to exclude all others from its operation may be inferred." *See Black's Law Dictionary*, 6th Edition (1990).
[15] Requiring an alien to be unmarried in order to be eligible for an immigration benefit is not limited

The director's interpretation is also consistent with the definition of "immediate relative" at section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i), which states, in pertinent part:

> In the case of an alien (and each child of the alien) who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, the alien shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 204(a)(1)(A)(ii) within 2 years after such date **and only until the date the spouse remarries.** For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) of this Act [i.e., the VAWA self-petitioning provisions] remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse. [Emphasis added.]

Further, the director's interpretation is consistent with the Congressional intent of *VAWA 1994* and *VAWA 2000*. The motivation of Congress in 1994 was to provide a means for an abused immigrant spouse to obtain immigration benefits over which her abusive spouse held complete control.[16] Because of such control, the immigrant spouse could hardly report the abuse to the police, or seek government assistance, for fear of jeopardizing any chance to obtain lawful status in the United States. VAWA 1994 limited the abusive spouse's control by permitting the abused spouse to self-petition. However, the self-petitioning spouse was still required to be married to the abusive U.S. citizen or LPR at the time the petition was filed.[17] Congress found this unsatisfactory and in 2000 further amended section 204 to permit an abused immigrant spouse to file a self-petition within two years of the legal termination of the abusive marriage.[18] The abused spouse must demonstrate a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the U.S. citizen or lawful permanent resident spouse.[19] Congress also provided that remarriage, after the petition had been approved, would not be a basis for revoking the petition.[20]

However, while Congress broadened the eligibility requirement to include divorced spouses filing within two years of the divorce, *it decided only to include the possibility of remarriage in the section pertaining to divorced spouses that had approved petitions* but had not adjusted status or

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to section 204 of the Act. For example, section 203 of the Act sets forth the preference allocation for family-sponsored immigrants. The first preference is the unmarried sons and daughters of U.S. citizens. *See* section 203(a)(1) of the Act.

[16] H.R. Rep. 203-395, available at 1993 WL 484760 at p.41.

[17] *See* 8 C.F.R. § 204.2(c)(1)(ii)(1996).

[18] VTVPA § 1503.

[19] Sections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

[20] VTVPA § 1507(b), amending 8 U.S.C. § 1154(h).

entered the United States as a permanent resident. As recently as January 5, 2006, Congress enacted VAWA 2005, which made further amendments to provisions related to battered spouses and children.[21] Again, however, Congress made no provisions for a remarried alien to self-petition based upon his or her prior abusive marriage. The fact that in two separate amendments to the original VAWA statute Congress left alone CIS's interpretation that remarriage prior to petition approval would result in a denial is compelling evidence that it considered the interpretation and found it an accurate view of Congressional intent. This fact is significant because "'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" *Russello v. United States* 464 U.S. 16, 23 (quoting *United States v. Wong Bo Kim,* 472 F.2d 720, 722 (5th Cir. 1972). *See also* Lorillard v. Pons 434 U.S. 575, 580 (1978) (noting that Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change).

It is further noted that on December 9, 2005, in *Delmas v. Gonzalez,* 422 F.Supp. 2d 1299 (S.D. Fla. 2005), the District Court upheld CIS's interpretation of the VTVPA so as to disqualify an alien who had remarried before filing a self-petition. While we acknowledge that the facts of this case differ slightly from those of *Delmas,* in that the petitioner in the instant case did not remarry until after filing, as well as the fact that a district court's decision is not binding precedent, the decision underscores the fact that CIS's interpretation that remarriage prior to approval precludes approval. The court stated:

> Plaintiff argues that there is no evidence that Congress intended remarriage to negate the need for protection of the abused spouse. The legislative history and context of VAWA and the VTVPA show otherwise. VAWA relief is limited to those vulnerable to abuse. The AAO apparently concluded that an abused spouse who remarries prior to filing a self-petition is not the type of battered immigrant woman Congress was concerned with when enacting VAWA or the VTVPA and, therefore, permissibly construed the statute to deny the instant petition.[22]

Based upon the above discussion, it is apparent that Congress wanted aliens with pending petitions to be either still married to the abusive spouse, or divorced within the last two years *but not married to another person.* Accordingly, the petitioner has not established that she had a qualifying relationship, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act due to failure to establish a connection between her divorce and the claimed abuse and because of her remarriage while this petition was pending.

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[21] Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law No. 109-162, (VAWA 2005).

[22] *Delmas v. Gonzalez,* 422 F.Supp. 2d 1299, 1303 (S.D. Fla. 2005).

Eligibility for Immediate Relative Classification under Section 201(b)(2)(A)(i) of the Act

Beyond the director's decision, the petitioner has also failed to demonstrate her eligibility for immigrant classification based on a qualifying relationship. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. As she has failed to establish that she had a qualifying relationship as the spouse of a United States citizen she is ineligible for immediate relative classification based on her former marriage, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.