



U.S. Citizenship
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DEC 13 2006

FILE: [REDACTED]
EAC 05 244 50332

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: [REDACTED]

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

ON BEHALF OF PETITIONER:



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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that her husband battered or subjected her to extreme cruelty, that she had a qualifying relationship with her husband, resided with him, entered into their marriage in good faith and was eligible for the bona fide marriage exemption from the bar to approval of visa petitions based on marriages contracted during removal proceedings at section 204(g) of the Act.

On appeal, counsel submits a letter, brief and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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

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

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

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

* * *

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

Evidence for a spousal self-petition –

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

* * *

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

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(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. The petitioner is a native and citizen of Ethiopia who entered the United States on July 30, 2000. The petitioner was previously married in Ethiopia and divorced her first husband after her arrival in the United States. On October 30, 2000, the petitioner filed a Form I-589 application for asylum and withholding of removal. The petitioner's case was referred to the Executive Office for Immigration Review and the petitioner was placed in removal proceedings on December 20, 2000. On February 28, 2001, the Immigration Judge denied the petitioner's applications for asylum, withholding of removal and relief under the Convention Against Torture. The Board of Immigration Appeals (BIA) dismissed the petitioner's appeal on March 7, 2005. On March 29, 2001, the petitioner married T-T-¹, a U.S. citizen.² T-T- subsequently filed a Form I-130 petition for alien relative on the petitioner's behalf, which was denied on February 8, 2002 because the Ethiopian court record of the petitioner's divorce indicated that her first marriage was not dissolved until April 5, 2001, after her marriage to T-T- in the United States. The Board of Immigration Appeals (BIA) dismissed the subsequent appeal of the Form I-130 petition on September 6, 2002.

The petitioner filed this Form I-360 on September 6, 2005. On November 16, 2005, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite qualifying relationship, battery or extreme cruelty, joint residence, good faith marriage and eligibility for the bona fide marriage exemption from section 204(g) of the Act. The petitioner, through prior counsel, responded to the NOID with additional evidence. On March 3, 2006, the director denied the petition on the grounds cited in the NOID and counsel timely appealed.

On appeal, counsel claims that the evidence submitted below and on appeal establishes the petitioner's eligibility and that the director ignored relevant evidence and relied on irrelevant discrepancies in the record to discredit the petitioner's testimony. We concur with the director's determination that the petitioner failed to establish the requisite qualifying relationship, battery or extreme cruelty, joint residence, good faith marriage and eligibility for the bona fide marriage exemption. Beyond the director's decision, the record also fails to demonstrate that the petitioner was eligible for immediate relative classification based on a qualifying relationship with her former husband.

¹ Name withheld to protect individual's identity.

² In this decision, we refer to the petitioner's second husband, T-T-, as her "former husband" and "second husband."

On appeal, counsel submits additional evidence including affidavits from the petitioner, her friends and acquaintances, [REDACTED]

[REDACTED] a letter from the petitioner's church; a psychological evaluation of the petitioner by Dr. [REDACTED] a licensed professional counselor; a copy of an apartment lease agreement signed by the petitioner and Mr. [REDACTED] as tenants; and a final divorce decree for the petitioner's first marriage issued on March 3, 2006.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director with the exception of the divorce decree dated March 3, 2006 because it appears that this document was not previously available to the petitioner.

Qualifying Relationship

The record contains a copy of a document entitled "Decision" issued by the Federal First Instant Court of Ethiopia regarding the divorce of the petitioner and her first husband. The document states that the court "here by [sic] unanimously gave this decision to dissolute [sic] the marriage. This decision is give [sic] this April 5, 2001." However, the document also refers to the "Nov. 3, 2001's [sic] plea of the applicant[.]" The petitioner's former husband submitted this document with his Form I-130 petition filed on the petitioner's behalf.

With the appeal of the Form I-130, the petitioner's former husband submitted a document entitled, "An Agreement to Divorce" dated September 13, 2000, which states that four elders, "according to the Ethiopian traditional customs and culture, . . . jointly decided that the marriage shall be ended."

With her Form I-360, the petitioner submitted a document entitled "Adjustment made for the Final Divorce Decision," which states that the petitioner and her first husband "dissolved their marriage on September 13, 2000 through the arbitration of elders." The document further states that, at the request of the petitioner's first husband "to legalize the decision," the petitioner was called to, but failed to appear on March 30, 2001, when the court heard the testimony of three witnesses and "approved the marriage dissolution made on September 13, 2000." The document concludes: "although the marriage was dissolved on April 5, 2001 again and was first made traditionally, we certify that it was dissolved by the family arbitration on September 13, 2000." This document is signed by the presiding judge of the "Addis Ketema Sub City Kebele 08/09/18 Social Court." The record contains no evidence that this court is affiliated with, or takes precedence over, the Federal First Instant Court of Ethiopia, which issued the petitioner's divorce "Decision" on April 5, 2001.

The director determined that the documents indicated that the petitioner's first marriage was not legally terminated until April 5, 2001, after her marriage to T-T- in the United States. Accordingly, the NOID directed the petitioner to submit additional evidence to establish that her first marriage was legally terminated prior to her second marriage. In response, the petitioner submitted her affidavit dated January 11, 2006, in which she states:

Sometime towards the end of September, I spoke with my ex-husband who told me that he was [sic] our divorce has been approved by the family arbiters and that it has become final. I was married in March 2001 believing that my prior marriage was dissolved in September 200[0]. . . . When I spoke with my husband about the fact that the initial divorce decree reflected a date of April 2001, he stated that he would obtain a correction because he said that even if the judges signed the order in April, the divorced [sic] should have reflected the date that the family arbitrators entered the decision which was September 2000.

On appeal, the petitioner submits a document entitled, "Final Divorce Decision," dated March 3, 2006 and imprinted with the seal of the ~~Adis Kebele~~ Sub City Kebele 08/09/18 Social Court. The document states: "Although the court approved the divorce decision of the family elders on April 5, 2001, in accordance with the amended family law article No. 81, sub article 1, we reaffirm that the divorce decision is effective as of the day the family elders rendered their decision which was September 13, 2000." Counsel insists that this document and the "Adjustment made for the Final Divorce Decision" submitted below establish that the petitioner's first marriage was legally terminated on September 13, 2000, before her marriage to her second husband in the United States.

We disagree. A divorce is generally recognized under U.S. immigration law when the divorce is shown to be valid under the laws of the jurisdiction granting the divorce. *Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983). Although the "Final Divorce Decision" and the "Adjustment made for the Final Divorce Decision" state that the petitioner's marriage was "dissolved" and "effective" on the date of the elders' decision of September 13, 2000, counsel submits no evidence that under Ethiopian law, the legal date of divorce is the date of such customary arbitration, rather than the date of the relevant court's recognition and registration of the customary arbitration.

The three relevant documents also present an unresolved discrepancy, which detracts from the petitioner's claim. The record does not explain why the "Final Divorce Decision" and the "Adjustment made for the Final Divorce Decision" were issued by a different court than that which issued the divorce "Decision" submitted with the Form I-130 filed by the petitioner's former husband, the Federal First Instant Court of Ethiopia. Accordingly, the documentation submitted by the petitioner fails to establish that her first marriage was legally terminated prior to her second marriage, on which this petition is based.

In the alternative, counsel claims that even if the petitioner's divorce was not effective until April 5, 2001, her marriage to her second husband became valid on that date. Counsel correctly states that under the law of the District of Columbia, parties who marry in ignorance of an impediment to their

legal union become parties to a common law marriage upon removal of the impediment if they continue to cohabit and live together as husband and wife. *See Cooper v. Lish*, 318 F.2d 262 (CADC 1963). *See also Matthews v. Britton*, 303 F.2d 408 (CADC 1962) (common-law marriage is recognized in the District of Columbia). However, as discussed below, the petitioner has not established that she lived with her former husband and consequently cannot demonstrate that their marriage became valid upon the legal termination of her first marriage.

The petitioner has not established that she had a qualifying relationship with her husband, as required by section 204(a)(1)(A)(iii)(II) of the Act.

Eligibility for Immediate Relative Classification

Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on her relationship with her husband, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(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. Because the petitioner did not establish a qualifying relationship with her husband, she has also failed to demonstrate her eligibility for immediate relative classification based on such a relationship.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- The petitioner's August 30, 2005 and January 11, 2006 affidavits;
- A joint checking account statement dated March 20 to April 19, 2002 and a corresponding blank check;
- Additional statements for the joint checking account dated from March 22 to November 19, 2001;
- Sworn statement of the petitioner's friend, [REDACTED] dated July 12, 2005;
- Sworn statement of the petitioner's roommate, [REDACTED] dated July 12, 2005;
- A residential lease listing the petitioner and her former husband as tenants, which cites a lease term of November 19, 2000 to November 1, 2003, but was signed by the petitioner and her former husband on December 21, 2001.

On the Form I-360, the petitioner states that she lived with her husband from March 2001 until April 2002 and that their last joint residence was on Sixth Street Northwest in Washington, the District of Columbia. In her August 30, 2005 affidavit, the petitioner does not state the former couple's address or addresses and does not otherwise describe their joint residence. In her January 11, 2006 affidavit, the petitioner explains that she only listed the period of the former couple's marital residence on the Form I-360, but that they actually rented an apartment together "in November of 2000 and the lease was to last until November 2004."

The testimony of the petitioner's friends does not support her claim. In his July 12, 2005 statement, Mr. [REDACTED] reports that he visited the petitioner and her husband "a couple of times when they were living together." Mr. [REDACTED] does not state the address of the former couple's residence or provide any further, probative details. Mr. [REDACTED] states that he has been sharing an apartment with the petitioner since 2000 and states that he heard the petitioner's former husband shout and curse at her. Yet Mr. [REDACTED] does not state the dates that the petitioner allegedly resided with her husband and he provides no other probative details.

The relevant documentary evidence also fails to establish that the petitioner resided with her husband. The lease for the former couple's purportedly shared residence on Sixth Street Northwest states the term of the lease as November 19, 2000 to November 1, 2003. However, the lease was not signed by the former couple until December 21, 2001, the same date of the letter of counsel for the petitioner's husband that was submitted in response to the Vermont Service Center's Request for Evidence (RFE) of, *inter alia*, the former couple's good faith marriage to support a bona fide marriage exemption to section 204(g) of the Act in connection with the Form I-130 filed by the petitioner's former husband.

The banking documents also fail to support the petitioner's claim. The March 22 to November 19, 2001 joint checking account statements list an address for the former couple on Euclid Street Northwest in Washington, District of Columbia. The petitioner makes no reference to this address in either of her affidavits. Moreover, the statements show that after the account was opened on March 22, 2001 with an initial deposit of \$130, no other debits or credits were made to the account except for the deduction of an eight-dollar monthly service fee. The March 20 through April 19, 2002 statement lists the former couple's alleged residential address on Sixth Street Northwest, but shows an opening balance of \$7.66, the deduction of the \$8.00 monthly fee and a 34-cent service charge, and a closing, negative balance of 34 cents. The blank check corresponds to the account statements, but the petitioner submitted no cancelled checks or other documentation of the actual use of this account by her or her husband.

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

The record fails to establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

The same documents listed in the preceding section are also relevant to the petitioner's claim of marrying her second husband in good faith. In her August 30, 2005 statement, the petitioner explains that she was introduced to her former husband by a friend at a restaurant where they "danced through the night." The petitioner states that when her former husband asked for her telephone number, she told him that she was still married to her first husband and could not see him. Nonetheless, the petitioner explains that her second husband contacted her, they went out for coffee, became friends and later started dating. The petitioner states that she told her former husband when she learned that her divorce from her first husband had been finalized, that he wanted to get married, but that she told him her immigration status was uncertain and she did not want to enter into a relationship which was doomed for failure. The petitioner then states, "He said that he was a United States citizen and I could remain in the US as a wife of a US citizen. We were married on March 29, 2001." The petitioner does not further describe their wedding or any of their shared marital experiences, apart from her husband's alleged abuse.

The relevant statements of the petitioner's friends provide no probative information regarding the petitioner's purported good faith in marrying her second husband. In his July 12, 2005 affidavit, Mr. [REDACTED] simply states that the petitioner's husband is his cousin, that he knows the former couple was married in 2001 and that he visited them a couple of times when they were living together. Mr. [REDACTED] merely states, "Right after [the petitioner] got married to [her former husband, she] seemed to be happy. I was also happy for her."

The relevant documentary evidence also fails to support the petitioner's claim. As discussed in the preceding section, the former couple's lease was signed over a year after the lease term purportedly began and is dated the same day of counsel's response to the RFE issued for the Form I-130 petition filed by the petitioner's former husband. The bank account statements and blank check show no use of the account by either the petitioner or her husband. Indeed, the only activity shown is the monthly deduction of a bank service fee. The petitioner submitted copies of three photographs, only one of which is a legible picture of her and her former husband. This single picture indicates that the petitioner and her former husband were together on one occasion, but the photograph does not establish the petitioner's good faith entry into their marriage.

The petitioner submitted no other documentary or testimonial evidence of her allegedly good faith entry into marriage with her former husband of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and described in the director's NOID. In her January 11, 2006 affidavit, the petitioner explains, "I could not provide jointly held insurance policy because my husband himself did not have health insurance policy. I could not provide jointly filed income taxes because my husband said that for the one year that we could have filed together (tax year 2002), he said that he could not include me because I did not have a social security number and I did not have a work permit." However, the petitioner does not explain the questionable dates of the former couple's lease or the inactivity of the former couple's

joint bank account. Accordingly, the record does not demonstrate that the petitioner entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Section 204(g) of the Act states:

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

Section 245(e) of the Act states:

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

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

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

only if the petitioner provides clear and convincing evidence that the marriage is bona fide

The record shows that the petitioner married her husband while she was in removal proceedings and the record does not show that the petitioner left the United States after being ordered removed. Section 204(g) of the Act thus bars the approval of this petition and the petitioner has not established her eligibility for the bona fide marriage exemption.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard.”) To demonstrate good faith entry into the qualifying relationship for a self-petition under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. 8 C.F.R. § 204.2(c)(2)(i); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his or her good faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. As the petitioner has failed to establish her good faith marriage under the lower standard of proof required under section 204(a)(1)(A)(iii) of the Act, she has also failed to establish a bona fide marriage by the higher standard required by section 245(e)(3) of the Act. Consequently, section 204(g) bars the approval of this petition.

Battery or Extreme Cruelty

The petitioner submitted the following evidence relevant to her claim of battery or extreme cruelty:

- The petitioner’s August 30, 2005 and January 11, 2006 affidavits;
- A psychosocial assessment report of the petitioner by Dr. [REDACTED] dated July 28, 2005;
- The sworn statement of the petitioner’s friend, [REDACTED] dated July 12, 2005;
- Sworn statement of the petitioner’s roommate, [REDACTED] dated July 12, 2005;
- Affidavit of the petitioner’s friend, [REDACTED] dated July 19, 2005;

- A letter dated January 11, 2006 from [REDACTED] of the Ethiopian Orthodox Tewahdo Debre Mehrat St. Michael Church.

In her August 30, 2005 affidavit, the petitioner states that shortly after their marriage, her husband changed for the worse. The petitioner reports that he "was almost always drunk," would become enraged and curse at and insult the petitioner. The petitioner states that she gave her husband all of her savings because he said he would use the money to pay for her immigration petition and would open a new savings account. The petitioner explains that her husband never opened such an account, but would instead frequently threaten her and demand that she give him more money for "drinks and drugs." The petitioner further states that her husband subjected her to "torturing intercourse" and she explains, "his sexual demands were contrary to my culture; and his manner of doing it was so violent that I always found it debilitating both physically and emotionally." The petitioner states that she left her husband several times to stay with friends, but that she always returned when he begged her to come back and promised to change until she could not "put up with him any more" and her husband abandoned her.

The remaining, relevant evidence fails to support the petitioner's claim. In his psychosocial assessment of the petitioner, Dr. [REDACTED] states: "Although she does not fully meet the diagnostic criteria for a Mood Disorder, [the petitioner] suffers from severe Depression. . . . In addition, [the petitioner] clearly suffers from Anxiety, although she does not fully meet the detailed diagnostic criteria for any specific type of Anxiety." Dr. [REDACTED] description of the behavior of the petitioner's husband differs significantly from the petitioner's own statements. For example, Dr. [REDACTED] states that the petitioner's husband "often wielded the uncertainty of her immigration status as a weapon against her," that he "tried to force her to drink" and that he "beat her into submission and she was frightened that he might kill her." The petitioner does not mention or discuss any of these actions in either of her affidavits.

In his July 12, 2005 affidavit, Mr. [REDACTED] states that he witnessed the petitioner's husband screaming at her, saying derogatory words and cursing her when he visited the former couple and that he once visited the petitioner after her husband had abandoned her with no food in the house. Mr. [REDACTED] states that the petitioner also told him "that there were instances when [her husband] even beat her when they were alone." Mr. [REDACTED] states that he witnessed frequent arguments where he heard the petitioner's husband shouting at and cursing the petitioner. He also reports that the petitioner looked exhausted and drained when he saw her in the mornings after her husband came home late, that the petitioner was "miserable" when she lived with her husband and that he saw her "cry in disappointment many times." However, as noted above, the record does not establish that the petitioner resided with her husband and Mr. [REDACTED] does not clearly state his living arrangements with the petitioner and her husband. Mr. [REDACTED] states that in November 2001, the petitioner's husband came and shouted at the petitioner when she was at Mr. [REDACTED] business. Mr. [REDACTED] reports that the petitioner cried hysterically after her husband left and told Mr. [REDACTED] that her husband abused her, but he provides no further, probative information.

Rev. ██████ states that the petitioner received guidance and counseling “to address her psychological problems and rectify her spiritual Disturbance.” Rev. ██████ confirms that the petitioner has been under “Tremendous and visible frustration,” but he provides no probative information regarding the cause of the petitioner’s condition.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and the director’s NOID. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). The NOID specifically directed the petitioner to submit, “An additional statement, in your own words describing the relationship with your abuser. Be as specific and detailed as possible.” However, in her January 11, 2006 affidavit submitted in response to the NOID, the petitioner did not further discuss her husband’s alleged abuse. In her August 30, 2005 affidavit the petitioner does not state that her husband beat her, as stated by Dr. ██████ and Mr. ██████. The petitioner also does not indicate that her husband used her immigration status to threaten her or tried to force her to drink, as stated by Dr. ██████. The petitioner’s failure to discuss these aspects of her husband’s behavior or to explain the discrepancies between her statements and those of Dr. ██████ detracts from the credibility of her claim. The remaining testimony of Mr. ██████ and Mr. ██████ is insufficient to establish battery or extreme cruelty. Accordingly, the petitioner has not demonstrated that her husband battered or subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The record fails to establish that the petitioner had a qualifying relationship with her husband, was eligible for immediate relative classification based on such a relationship, resided with her husband, entered into their marriage in good faith and that her husband battered or subjected her to extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. The petitioner has also failed to establish her eligibility for the bona fide marriage exemption and section 204(g) of the Act further bars the approval of this petition. Accordingly, the petition must be denied.

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. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.