

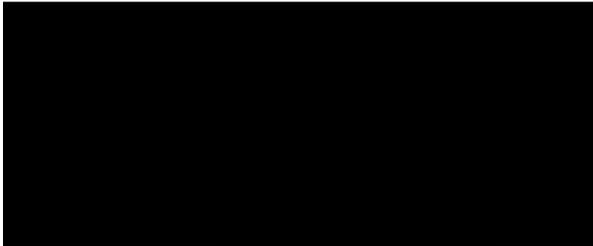


U.S. Citizenship
and Immigration
Services

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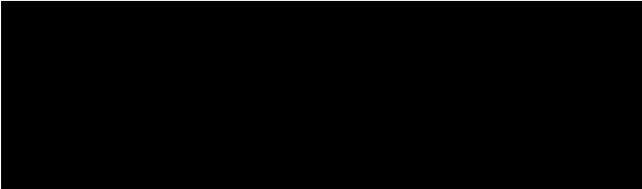
Office: VERMONT SERVICE CENTER

Date: **MAY 17 2006**

IN RE: Petitioner: [Redacted]

PETITION: Petition for Special 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 F. 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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of the Philippines who last entered the United States as a fiancée (K-1) on May 13, 2002, pursuant to an approved Form I-129F filed by [REDACTED] a U.S. citizen. The petitioner married [REDACTED] on May 22, 2002 in Kitsap County, Washington. The couple's marriage was decreed invalid by the Lincoln County Superior Court of Washington on November 12, 2002. On May 29, 2004, the petitioner filed a Form I-360 seeking 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 subjected to battery or extreme cruelty by her United States citizen spouse.

Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, the director issued notices on January 25 and May 25, 2005 requesting additional evidence that the petitioner entered into marriage with [REDACTED] in good faith and that [REDACTED] subjected her to battery or extreme cruelty during their marriage. The petitioner, through counsel, requested and was granted additional time to respond and submitted further documents on March 26, April 16, July 22, and September 22, 2005. On November 15, 2005, the director denied the petition because the record failed to establish that the petitioner entered into her marriage in good faith and was subjected to battery or extreme cruelty by her U.S. citizen ex-husband during their marriage.

On appeal, counsel submits a brief, an additional affidavit of the petitioner, a copy of the default order against the petitioner made in connection with the judgment invalidating her marriage to [REDACTED] an additional letter from the psychologist whose assessment was submitted below, and a copy of a note from [REDACTED] to the petitioner that was previously submitted. We find that the record, as supplemented on appeal, does not establish the requisite good faith marriage and battery or extreme cruelty. However, because the director denied the petition without complying with the regulation at 8 C.F.R. § 204.2(c)(3)(ii), the case will be remanded for issuance of a Notice of Intent to Deny (NOID) on these grounds.

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 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).

Pursuant to section 204(a)(1)(A)(iii) (II)(aa)(CC) of the Act, an alien who has divorced a United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person:

who was a bona fide spouse of a United States citizen within the past 2 years and –

* * *

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.

Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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 . . . , 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 contained 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.

* * *

(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 evidence will be considered.

The Petitioner's Burden of Proof and the Credible Evidence Standard

In visa petition proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Counsel contends that the petitioner "submitted evidence which clearly establishes her eligibility" and that the director violated the "any credible evidence" standard because she did not accord sufficient weight to certain testimonial evidence and denied the petition based, in part, on what she determined to be significant inconsistencies in the record. As discussed below, although we do not entirely concur with the director's assessment of the evidence, we do not find that the director's decision went beyond the regulation at 8 C.F.R. § 204.2(c)(1)(i). The regulatory mandate to consider any credible evidence does not mean that all relevant evidence will be found credible or be sufficient to meet the petitioner's burden of proof. As the regulation states, "The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service." 8 C.F.R. § 204.2(c)(1)(i).

Entry Into the Marriage in Good Faith

As evidence of her good faith marriage to [REDACTED] the petitioner initially submitted the following evidence: copies of photographs of the petitioner, [REDACTED] and the petitioner's family and friends; letters written by [REDACTED] to the petitioner; letters and documents identifying the petitioner as [REDACTED] and addressed to her at [REDACTED]'s address; her own affidavit and affidavits from her sister and friend. In response to the director's requests for additional evidence, the petitioner submitted copies of two additional photographs of herself and [REDACTED] copies of two postmarked letters and three electronic mail messages written by the petitioner to [REDACTED] and dated between October 2001 and January 2002, and the petitioner's second affidavit. The documentary evidence submitted below shows that [REDACTED] visited the petitioner and her family in the Philippines, that he and the petitioner corresponded before and after their engagement, that they were married and that they resided together and the petitioner took [REDACTED]'s last name.

In her first affidavit submitted with her Form I-360, the petitioner stated that [REDACTED] was her pen pal and that they corresponded with each other beginning in October 2000 until September 2001, when [REDACTED] came to the Philippines to meet her and his other female pen pals. The petitioner explained that during the two weeks of [REDACTED]'s visit, she and her family and friends took him sightseeing, to the beaches, shopping and to eat at the mall. She stated that she visited [REDACTED] every day at his hotel to eat breakfast with him and have "heart to heart talk." The petitioner stated that at the end of his visit, [REDACTED] asked her to marry him and that she decided to accept his proposal because she loved him. The petitioner explained that after [REDACTED] returned to the United States, he petitioned for her as his fiancée and they continued to communicate through letters and telephone calls.

In her affidavit dated April 8, 2005, the petitioner explains that when he "kicked [her] out," Mr. [REDACTED] kept all the documents relating to their marriage and their shared life. She states that she does not have any insurance policies in which [REDACTED] named her as his beneficiary and also does not have any bank statements, tax records or any other documentary evidence of shared financial responsibilities because she was financially dependent on [REDACTED], he did not include her on any of his bank accounts, and they did not file any joint tax returns because they only lived together for two months. She also states that she and [REDACTED] did not buy any property together and did not have any children.

The petitioner's sister confirms that she and her family treated [REDACTED] like a brother when he visited their home in the Philippines, but she does not discuss the petitioner's own intentions or behavior, as observed by her, during the former couple's courtship. [REDACTED] the petitioner's friend, states, "[W]hen [the petitioner's] husband came here to visit when he was still her fiancée [sic], she treat [sic] him well, entertained and take care all of his needs." Yet [REDACTED] does not further discuss the former couple's courtship in any detail or offer any other information regarding the petitioner's alleged good faith in marrying [REDACTED]. These affidavits are of little probative value.

The record indicates that the petitioner left [REDACTED]'s home in July 2002 and that the couple's marriage was declared invalid on November 12, 2002. The director stated that the petitioner did not provide any insight into her courtship, did not describe her marital relationship with [REDACTED] apart from his alleged abuse, did not describe what documents [REDACTED] possessed regarding their marriage, and determined that the inconsistencies in the petitioner's statements regarding the alleged abuse undermined her credibility. The director concluded that the evidence "does not hold sufficient weight to dispel the questions raised by the ruling that [the petitioner's] marriage was declared invalid four months after [she] left. Furthermore, the record does not contain sufficient evidence of an independent objective nature to support [her] claims." The director further stated, "While you may not have had any documentary evidence, it does seem as though other evidence would be available to establish your claim of marrying in good faith."

On appeal, the petitioner submits a fourth affidavit dated February 22, 2006. She repeats the description of her courtship made in her first affidavit and adds that [REDACTED] proposed to her after “about a week of dating,” that she asked him to give her some time to think about it and that she accepted his proposal three days later. The petitioner states that during the first week after her arrival in the United States, she and [REDACTED] were very happy and that he took her “to tour some local hot spots and [they] even dined at fancy restaurants.” The petitioner states that immediately after their marriage, nine days after her arrival, [REDACTED]’s behavior changed and he became abusive. The petitioner explains that she knows that [REDACTED] kept the couple’s marriage certificate, photographs and electronic mail messages. She states that [REDACTED] told her she was the beneficiary on his insurance policies and his house and that if that was true, she assumes that he has those documents in his possession. The petitioner also states that her sister was aware of her good faith in marrying Mr. [REDACTED] but that the petitioner has lost contact with her sister because she is working in Saudi Arabia.

On appeal, counsel contends that contrary to the director’s statements, the petitioner has provided insight into her courtship, a description of her marital relationship with [REDACTED] apart from his abuse and the documents in [REDACTED]’s possession regarding their marriage. We do not dispute the possibility that the petitioner’s courtship and marriage proceeded as described in her four affidavits and the explanation of why the petitioner does not have further documentary evidence of her good faith marriage is credible. The record shows that the petitioner resided with [REDACTED] for less than two months. Hence, it is understandable that the petitioner does not have evidence of the former couple’s joint tax returns, insurance policies or other documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). We also note that in addition to the evidence submitted in this case, the petitioner’s administrative file contains 13 postmarked letters written by the petitioner to [REDACTED] and dated between November 16, 2000 and August 1, 2001.

However, the grammar, vocabulary, syntax and style of the petitioner’s first affidavit are much different from that of her three latter affidavits. These differences indicate that the language of the latter affidavits is not entirely the petitioner’s own and detracts from the credibility of her statements. For example, in her first affidavit, the petitioner states:

He called me on my cell phone that his [sic] already in my town to meet me he check in at the hotel and said his [sic] going to meet me over there so I went at [sic] the hotel with my friend and meet him. We go out and eat and bring him home to meet my parents my family [sic]. My family were so nice to him they welcome him so warmly even though their [sic] shy to talk. Together with my friends and some of my family member [sic], we showed it [sic] to him our beautiful spots. . . . Everyday I visit him at the hotel coz [sic] he wants me to be there we eat breakfast together and have heart to heart talk and go out. I spend my own money most of the expenses when we go out coz [sic] sometimes my friends are there go with us [sic].”

When discussing [REDACTED]’s insurance and house in her first affidavit, the petitioner states, “He always told me about his insurance and his house that I could have it since I will be his beneficiary, I told him im [sic] not interested on [sic] it and u [sic] have your children.”

The petitioner's discussion of these topics in her second affidavit, dated April 8, 2005 and submitted in response to the director's request for additional evidence, presents a much different grammar, vocabulary, syntax and style. For example, the petitioner states:

I married [REDACTED] on May 22, 2002 because I was in love with him. I married [REDACTED] in good faith. I do not have in my possession any insurance policies in which [REDACTED] named me as his beneficiary. I did not buy any insurance policies and I had no money to buy any. . . . I also do not have any bank statements, tax records or any other documents that show we share accounts and other similar responsibilities. At the time, I was financially dependent on [REDACTED], as such, and as far as I was told, he didn't include my name on any of his banking accounts, or any other financial records.

While the petitioner's English language skills may have improved during the time between her first and three subsequent affidavits, the different syntax and style of the affidavits indicates that the language of the latter three affidavits is not entirely the petitioner's own, thus detracting from their credibility and probative value.

On appeal, counsel also contends that the invalidation of the petitioner's marriage to [REDACTED] does not contradict her claim of entering into their marriage in good faith because the petitioner was served by publication and [REDACTED] obtained [the] annulment without any participation from, or knowledge by, [the petitioner]." On appeal, the petitioner submits a copy of the court order finding the petitioner in default, which shows that the petitioner was served with summons by publication on August 8, 2002. However, the record does not establish the specific grounds for the invalidation of the petitioner's marriage. The Petition for Declaration Concerning Validity filed by [REDACTED] alleges that the marriage should be invalidated because "a party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage, and because the parties have not ratified their marriage by voluntarily cohabiting after the cessation of the force or duress or discovery of the fraud." The November 12, 2002 judgment declaring the marriage invalid states that findings of fact and conclusions of law were entered in the case, but the record does not contain those findings and conclusions and the invalidation judgment itself does not state whether or not the marriage was invalidated based on the petitioner's force, duress, or fraud as alleged in [REDACTED] petition.

In addition, the contrast between the grammar, vocabulary, syntax and style of the petitioner's first affidavit and her latter affidavits detracts from the credibility and probative value of the petitioner's explanation of the termination of her marriage. For example, in her first affidavit, the petitioner states:

My family in the Philippines had told me that [REDACTED] sent me letter [sic] together with the divorce papers there. He thinks I am back home now. He even said on his letter that he treated me more than what I deserved [sic] and that what I did and my ignorance will cost me more than our marriage. I don't know what that meant. My family send the letter and the divorce paper to me here.

In contrast, in her affidavit submitted on appeal and dated February 22, 2005, the petitioner states, "I was not aware that [redacted] went to court to get our marriage annulled. I did not know anything about the annulment and I did not participate in the annulment proceedings."

The petitioner's postmarked letters to [redacted] and the evidence that she resided with [redacted] and took his last name provide some evidence of her good faith marriage to [redacted]. The documented short duration of the former couple's marriage also explains the lack of joint financial and other documents. However, the court orders indicate that the marriage may have been invalidated on the grounds of the petitioner's force, duress or fraud. In addition, the significant differences between the petitioner's first and later statements regarding her courtship, marriage and the termination of her marriage detract from the credibility of her statements. Consequently, the present record does not persuasively establish that the petitioner entered into marriage with [redacted] in good faith, as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii).

Battery or Extreme Cruelty

As evidence of battery and extreme cruelty, the petitioner initially submitted her first affidavit, a psychological assessment by [redacted], a letter from [redacted], counselor at the Houston Area Women's Center (HAWC), a copy of a note written by [redacted] to the petitioner, a joint affidavit from the petitioner's friends, [redacted] and [redacted] and a letter from the petitioner's friends [redacted] and [redacted]. In response to the director's May 25, 2005 request for additional evidence, the petitioner submitted a second letter from [redacted] dated July 12, 2005; [redacted] notes from seven counseling sessions with the petitioner; a HAWC "No Suicide Contract" signed by the petitioner; a psychological evaluation of the petitioner by [redacted] and the petitioner's third affidavit dated September 21, 2005.

In her first affidavit, the petitioner stated that [redacted] made her feel pressured and pushed into having sexual relations when she was not ready and that he laughed at her. She reports that because her husband did not buy food, she ate canned goods and frozen foods, which [redacted] did not tell her had been bought by his former wife two years ago until after she had eaten them. The petitioner states that [redacted] did not buy her warm clothes and turned off the heat when he went to work. She states that she felt feverish one day after getting a vaccination, but [redacted] did not give her any medicine and just ignored her. The petitioner states that [redacted] would not let her buy anything at the grocery store and would not pay the filing fee for her Form I-485. The petitioner states that Mr. [redacted] stayed out late at night with his friends and left her alone in his isolated house, which frightened her. The petitioner states that [redacted] told her that he had been married two times before, but that she later found out from [redacted] that [redacted] had been married four times and that he was under a court order to stay away from his fourth wife's daughter.

The petitioner states that [REDACTED] told her she was just using him, that she married him under false pretenses, that she was just after his money, that she was ignorant and trashy, and threatened to send her back to the Philippines. The petitioner reports that she accidentally saw a letter that [REDACTED] had faxed to the INS asking about sending her back to the Philippines. The petitioner states that Mr. [REDACTED] told her that he was not going to hurt her physically because it would produce evidence.

The petitioner further states that one day she accidentally accepted a short collect call from her friend in the Philippines. She reports that when she told him about the call, [REDACTED] yelled at her, smashed the telephone and other things in the house and then left, did not return until very late and did not speak to her the next morning. The petitioner states that [REDACTED] would ignore her or tell her that he wanted her to stay away from him. The petitioner states that one day [REDACTED] called and told her that [REDACTED] had called [REDACTED] and told him not to take the petitioner to the airport. The petitioner states that on July 6, 2002, [REDACTED] kicked her out and drove her to the Loverins' house. She then went to Houston to stay with a family friend. The petitioner reports that Mr. [REDACTED] behavior made her feel betrayed, disappointed, scared, nervous, worthless, humiliated and suicidal.

In her psychological evaluation of the petitioner made on February 26, 2004, [REDACTED] states, "Emotionally, by the end of her marriage, [the petitioner] is believed to have been experiencing symptoms of a Major Depressive disorder (DSM IV: 296.2) from which she has partially recovered. . . . At present, [the petitioner] continues to recover from her trauma and still evidences symptoms of a mild clinical depression." [REDACTED] recommends counseling and consultation with a primary care physician for consideration of anti-depressant medication.

In her first letter dated April 30, 2004, [REDACTED] of HAWC states that the petitioner received individual counseling on six occasions between March 30 and April 26, 2004. [REDACTED] confirms that she has received the required 58-hour training on domestic violence and sexual assault and states,

Based on my training, experience, and observation of [the petitioner], I think that she is experienced [sic] common effects of domestic violence. Her descriptions of her husband's treatment are common indicators of emotional, sexual, economic and spiritual abuse. Her feeling [sic] of fear, sadness, loneliness and low self-esteem which resulted from the abuse are consistent with domestic violence survivors with whom I have worked with [sic].

In their joint affidavit, [REDACTED] state that they know the petitioner and that she was "a victim of serious maltreatment by her husband, kicking [sic] her out and brought to our residence, denied her food and shelter, and filed annulment with [the petitioner], his fifth wife[.]" The letter from [REDACTED] and [REDACTED] indicates that the petitioner told them that [REDACTED] was mad at her for accepting their collect call, but does not discuss any further instances of the alleged abuse.

In her second letter dated July 12, 2005, [REDACTED], repeats information stated in her previous letter and adds that the petitioner received additional counseling at HAWC on July 5 and 12, 2005. Ms.

█ notes from the petitioner's March 30, 2004 session state, "client stated she's divorced and had a Fear of Deportation. Low self-esteem. The abuse still flashes back with nightmares." The notes from the petitioner's July 5, 2005 session state, "Client . . . seemed very suicidal because the INS does not understand how hard she has been through [sic]. She said to me that there are some incidents she did not tell because she does not want her husband to be in trouble and from that fear, plus all the stress she had experienced, now she wants to die, that the only way to get rid of this life [sic]." The record contains a non-suicidal contract signed by the petitioner on July 5, 2005.

In her psychological evaluation of the petitioner dated July 17, 2005, █ concludes that the petitioner "meets criteria for Posttraumatic Stress Disorder – DSM-IV 309.81" and states, "During the evaluation, observable indicators included psychomotor agitation, tearfulness, and a pained facial expression." █ assessment also discusses two examples of █'s alleged abuse that the petitioner did not mention in her first affidavit: that █ routinely referred to his gun in an intimidating manner and brandished the gun at her after she accepted the collect call from her friends in the Philippines.

In her third affidavit dated September 21, 2005, the petitioner further discusses █'s alleged abuse and his behavior after the collect call. She states that █ went into the bedroom, got his handgun, came out, pointed the gun at the petitioner's head and said he could kill her like a dog if she did not listen to him or do what he asked her to do. The petitioner states that she was crying hysterically and thought she was going to die. The petitioner explains that █ grabbed her arm and dragged her into the bedroom, slapped her in the face, called her a derogatory name, locked her in the bedroom and then left. The petitioner states that █ returned very late and eventually unlocked the bedroom door.

The petitioner further states that █ made her beg for money to buy basic necessities such as soap and toothpaste and that he kept his wallet with him even when he went to the bathroom. She adds that █ would not let her leave the house without him. The petitioner explains that she never called the police because in her native country a wife rarely reports to the police and that she only later found out from her friends that she could have called the police. The petitioner further explains that she did not seek refuge in a woman's shelter because she did not know that such shelters existed and that she stayed at the █ house after █ kicked her out because she did not know where else to go. The petitioner states that she had bruises inflicted by █ but that she did not take pictures because it never occurred to her to do so, she did not have money to buy film and because in the Philippines a wife "would typically feel ashamed to do that to her husband."

In her September 21, 2005 affidavit, the petitioner also states that █ were her only friends during her marriage to █. She explains that although they did not witness Mr. █ yell or hit her, the █ knew that he did not adequately provide for her basic needs and █ saw the petitioner's bruises and witnessed her crying. However, the petitioner states that she has lost contact with the █ and was unable to ask them to provide an additional affidavit.

The director determined that [REDACTED]'s report was unreliable because it contained information inconsistent with the petitioner's own statements. The director also concluded that because the petitioner's description of the collect call incident in her first affidavit did not include [REDACTED] threatening the petitioner with a gun, the "inconsistency in your story serves to undermine the reliability of your statements." The director also noted that the note from [REDACTED] did not appear threatening.

On appeal, counsel contends that the petitioner's statements are not inconsistent, but reflect her inability, as a person suffering from Post-Traumatic Stress Disorder (PTSD), to fully recall this part of her trauma, as described in her first affidavit. In her letter dated January 12, 2006 and submitted on appeal, [REDACTED] states:

The 'inability to recall an important aspect of the trauma' is listed under Section C of the DSM-IV . . . diagnostic criteria for Post-Traumatic Stress Disorder (PTSD). There is clinical evidence that the more times a person is able to articulate a coherent story of the traumatic events, the more details he or she is able to fill in. Both the DSM-IV diagnostic criteria and the clinical evidence are consistent with cognitive and neuroscientific studies that have found human memories to be constructed as opposed to retrieved.

We agree that the petitioner's first and subsequent descriptions of the collect call incident are consistent. Although the petitioner's September 21, 2005 affidavit is more specific, the additional details do not conflict with the petitioner's original description of this incident.

On appeal, counsel further contends that the testimonial evidence establishes that [REDACTED] behavior constituted extreme cruelty pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Mr. [REDACTED] purported behavior and its effects on the petitioner, as described in the petitioner's affidavits, [REDACTED] counseling notes, [REDACTED]'s evaluation, and [REDACTED] evaluation and letter, correspond to the regulatory description of battery or extreme cruelty. [REDACTED] allegedly slapped and grabbed the petitioner leaving her with bruises. He purportedly brandished a gun, threatened to kill the petitioner and forcefully detained her by locking her in their bedroom. Mr. [REDACTED] also allegedly called the petitioner derogatory names, threatened to send her back to the Philippines, deprived her of basic necessities, physically and socially isolated her and eventually kicked her out of their marital home. [REDACTED]'s purported behavior, including alleged periods of contrition as stated in the petitioner's first affidavit, is described as an overall pattern of violence including both physical and psychological abuse.

However, the different grammar, vocabulary, syntax and style of the petitioner's first and subsequent affidavits indicates that the language of the latter affidavits is not entirely her own and detracts from the credibility of her statements. For example, when describing [REDACTED]'s behavior after she told him she had accepted the collect call, the petitioner states in her first affidavit:

He smashed the phone and other things in the house and continued yelling to my face. I was crying and beyond scared. He looks like he wants to eat me. And he call his friend and talk about me lock the bedroom [sic]. That night he left me alone again in his house and returned so late. . . . I did not sleep at that night coz [sic] am worried what might happened to him I know it was my fault but did mean to do it [sic]. He did not even talk to me the next morning. Since then, I felt nervous and scared every time I saw his car heading home.

In her affidavit submitted on appeal and dated February 22, 2006, the petitioner explains that cultural beliefs prevented her from calling the police after this incident and further states:

I also did not initially report the incident, because it was a very scary and traumatic event in my life. I had a gun pointed at my head and my husband threatening to kill me. After the incident occurred, I blamed myself for [redacted] actions. I thought that I was the one to blame for what [he] did and I thought to some extent maybe I had brought it on myself. As such, I blocked the whole incident from my memory, not wanting to remember what had happened. I only remembered the incident after seeing [redacted] and realizing that I was not at fault for accepting the collect call and that [redacted] should not have brandished the gun at me the way that he did.

Again, we do not discount the possibility that the petitioner's English language vocabulary and skills have improved in the time between her first and subsequent affidavits. We also recognize that domestic violence counseling often helps survivors recall and articulate incidents of abuse and gain insight into the effects of the abuse. Nonetheless, the significant differences in the grammar, vocabulary, syntax and style of the petitioner's first affidavit as compared to her subsequent affidavits indicates that the specific language of the subsequent affidavits is not entirely the petitioner's own and consequently detracts from the credibility and probative value of her statements. As the testimony of [redacted] and [redacted] are predominately based on the petitioner's own statements, their attestations alone do not independently establish that [redacted] battered or subjected the petitioner to extreme cruelty during their marriage.

Counsel further claims that [redacted] behavior is analogous to the abuse described in *Hernandez v. Ashcroft*, 345 F. 3d 824 (9th Cir. 2003). *Hernandez* is neither a binding nor persuasive authority for this case. The petitioner's case did not arise within the jurisdiction of the Ninth Circuit and both the law and alleged facts of her case significantly differ from those in *Hernandez*. The *Hernandez* case addressed the issue of extreme cruelty in the context of determining the alien's eligibility for suspension of deportation under former section 244(a)(3) of the Act, 8 U.S.C. § 1254(a)(3) (1996). *Id.* at 835-36. Specifically, the *Hernandez* court held that the abuser's behavior constituted extreme cruelty in the United States because his nonviolent actions were part of a period of contrition in a documented cycle of domestic violence. *Hernandez*, 345 F.3d at 840-41.

The *Hernandez* court gave deference to the regulation at 8 C.F.R. § 204.2(c)(1)(vi) in its interpretation of the phrase "extreme cruelty" as used in former section 244(a)(3) of the Act. *Id.* at

839. While the court found the abuser's actions to constitute extreme cruelty under this interpretation, we do not find his actions analogous to those of [REDACTED] in this case. In *Hernandez*, the record established three specific instances where the alien's husband physically attacked her by throwing her against the wall, breaking a chair across her back, breaking a pedestal fan on her forehead, and gouged her hand with a knife, cutting her finger to the bone. *Id.* at 829-30. The alien bore physical scars from the injuries inflicted by her husband that were observed by the Immigration Judge. *Id.* at 831. The first two incidents were followed by periods of contrition, including the second period when the petitioner fled to the United States, her husband tracked her down, called her every day, went to visit her, begged her to return to Mexico, and promised to seek marriage counseling. *Id.* at 830. However, when the alien returned, her husband refused to see a counselor and again became violent, eventually attacking the alien with a knife. *Id.*

[REDACTED]'s purported behavior, as described by the petitioner, is of a significantly different magnitude than the abuse in *Hernandez*. The petitioner describes one incident of battery in which [REDACTED] allegedly grabbed her arm, dragged her to the bedroom, slapped her face and pointed a gun in her face. The petitioner claims she was bruised, but states she is unable to provide corroborative evidence of her injury. In her first affidavit, the petitioner states, "there were times [REDACTED] would cry and say he's sorry for what he said." The petitioner does not describe these purported periods of contrition in any detail in her first affidavit and does not further mention them in any of her three subsequent affidavits. Most importantly, the alien's testimony in *Hernandez* was found credible by the Board of Immigration Appeals and was accepted as undisputed by the *Hernandez* court. *Id.* at 829 n.3. Given the aforementioned differences between the petitioner's first and subsequent affidavits in this case, we are unable to similarly credit her testimony as fully credible.

The present record does not persuasively demonstrate that [REDACTED] subjected the petitioner to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(i), 204.2(c)(1)(vi), 204.2(c)(2)(iv).

The present record fails to establish that the petitioner entered into her marriage with [REDACTED] in good faith or that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

Accordingly, the case will be remanded for issuance of an NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.