



U.S. Citizenship
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FILE: [REDACTED]
EAC 06 092 51474

Office: VERMONT SERVICE CENTER

Date: DEC 18 2007

IN RE: Petitioner: [REDACTED]

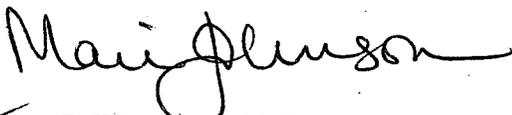
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.


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 immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii) (2007), 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 she resided with her husband, married him in good faith and that her former husband subjected her or her child to battery or extreme cruelty during their marriage.

On appeal, counsel submits a letter.

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 . . . spouse, 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 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 and procedural history. The petitioner is a native and citizen of Colombia who entered the United States on August 6, 1999 as a nonimmigrant visitor (B-2). On February 23, 2002, the petitioner married D-B-¹, a U.S. citizen, in Rhode Island. D-B- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on July 24, 2003. That same date, the petitioner was served with a Notice to Appear for removal proceedings charging her under section 237(a)(1)(B) of the Act as having remained in the United States beyond her period of authorized stay. The petitioner remains in proceedings before the Boston Immigration Court and her next hearing is scheduled for January 9, 2008.

D-B- filed a second Form I-130 on the petitioner's behalf, which was denied on November 16, 2004 after D-B-'s failure to respond to a Request for Evidence (RFE). The petitioner filed a prior Form I-360 petition (Receipt Number [REDACTED]), which was denied and the appeal of which was summarily dismissed on November 10, 2005. The petitioner filed the instant Form I-360 on February 3, 2006. On July 26, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite residence, battery or extreme cruelty and good faith marriage. The petitioner, through counsel, timely responded to the NOID with additional evidence. On October 19, 2006, the director denied the petition because the petitioner failed to demonstrate the requisite residence, abuse and good faith marriage. Counsel timely appealed.

On appeal, counsel attempts to explain discrepancies in the record noted by the director, claims that the petitioner met her burden of proof and that the evidence submitted below, considered in the aggregate, established the petitioner's eligibility. We concur with the director's determinations. Counsel's claims on appeal fail to overcome the grounds for denial.

Joint Residence

We concur with the director's determination that the petitioner did not establish that she resided with her husband. The record contains the following, relevant evidence:

- The petitioner's December 20, 2005 and August 22, 2006 affidavits and her December 20, 2005 affidavit filed with the petitioner's complaint against her prior attorney;
- Copy of the former couple's residential lease signed by the former couple and their alleged landlord, [REDACTED], on March 30, 2002 and copies of monthly rent receipts from April through September 2002;
- Certified copy of the former couple's joint federal income tax return for 2002;

¹ Name withheld to protect individual's identity.

- Letters from the former couple's alleged landlords, [REDACTED]
- Copy of the passbook and a letter regarding the joint bank account of the former couple;
- Customer Ledger from Cox Communications listing activity on a joint account beginning on December 5, 2002;
- Letters from the petitioner's friends and acquaintances, [REDACTED] and [REDACTED]
- Photocopies of photographs of the petitioner, her husband, her son and other individuals at the former couple's wedding celebration and on one other occasion.

On the Form I-360, the petitioner stated that she lived with her husband from their marriage on February 23, 2002 until February 2003 and that they last lived together at [REDACTED] in Central [REDACTED]. However, the petitioner provided conflicting testimony regarding the duration of her purported residence with her husband. In her prior Form I-360, the petitioner stated that she resided with her husband until September 2003. In addition, in her ten-page December 20, 2005 affidavit, the petitioner states that the final argument before the former couple's separation occurred in "February of 2002." In her August 22, 2006 affidavit, the petitioner again states that her husband "left about February of 2002." While the latter two statements may be typographical errors, the petitioner provides no explanation for the discrepancy between the dates of her residence with her husband as stated on her prior and instant Forms I-360.

We note that in the NOID and her final decision, the director stated that an address check performed by Citizenship and Immigration Services (CIS) indicated that the petitioner lived at the [REDACTED] residence, but that her husband did not.² The director determined that the petitioner's failure to explain this discrepancy and "the lack of evidence" failed to establish that the petitioner resided with her husband. However, the "address check" simply states that no records were found from a search of the petitioner's husband's social security number. The search did not state another address for the petitioner's husband. Rather than establishing that the petitioner's husband did not reside with her, the search result is simply equivocal.

Nonetheless, the relevant evidence fails to establish that the petitioner resided with her husband. The photocopied photographs and testimony of the petitioner's friends and acquaintances provides no detailed, probative information regarding the petitioner's purported residence with her husband. The Cox Communications customer ledger lists the names of the petitioner and her husband, but does not clearly indicate if the account was opened jointly or if the petitioner's husband was added to the account at a later date.

Although the former couple's 2002 tax return was jointly filed, it was signed by the former couple after their separation and the petitioner explained, in her August 22, 2006 affidavit, that she went to her

² The address check was performed in 2003 during the adjudication of the first Form I-130 petition filed by D-B- and the petitioner's corresponding Form I-485, Application to Adjust Status.

husband's sister's home in order to have her husband sign the tax form. In addition, only the petitioner's income is reported on the tax return, despite the fact that a June 4, 2002 letter from ██████████ Construction (submitted with the Form I-864, Affidavit of Support, of the petitioner's husband) states that the petitioner's husband had been employed by the company since May 2002. The failure to include the income of the petitioner's husband and the lack of any documentation of his 2002 income documenting his address at that time further detracts from the petitioner's claim that the former couple resided together.

The lease, rent receipts and letters from the petitioner's purported landlords are also of little probative value because they contain discrepancies and are inconsistent with the petitioner's own testimony. In his June 28, 2003 letter, Mr. ██████████ states that the petitioner and her son were his tenants at the ██████████ residence "since July 1, 1999 until September of 2002 when I sold my house. They lived by themselves until [the petitioner] got married with [D-B-] in February of 2002." In her June 28, 2003 letter, Ms. ██████████ states that the petitioner, her son and husband "have been [her] tenants for almost a year at ██████████ [C]entral Falls, RI 02863." Ms. ██████████ thus indicates that the petitioner, her son and husband were her tenants from approximately June 2002 through June 28, 2003. However, the lease and at least two of the accompanying photocopied rent receipts signed by Ms. ██████████ predate this period. Moreover, Mr. ██████████ stated that he did not sell his house until September 2002 and does not indicate that Ms. ██████████ had the authority to enter a lease on, or issue rent receipts, for the residence prior to that time. In addition, both Mr. ██████████ and Ms. ██████████ state that the petitioner and her husband were living together as of the date of their letters, June 28, 2003, in contrast to the petitioner's assertion on the instant Form I-360 that she and her husband separated in February 2003. Finally, we note that the signature of the petitioner's husband on the lease differs significantly from his signature on the two Form I-130s that he filed on the petitioner's behalf.

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). In addition, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

We acknowledge the petitioner's explanations as to why she does not have further documentation of her residence with her husband. In her December 20, 2005 affidavits, the petitioner explained that her husband moved into her Emmett Street home, where she had been living previously and so the electric and gas service for the residence remained in her name. The petitioner further explained that the former couple did not have joint credit cards or health and life insurance. The petitioner stated that she kept her auto insurance separately from her husband because he "had a bad previous driving record." Although the bank account pass book shows no activity (after the opening deposit on May 10, 2002) until after the former couple separated, the record shows that the petitioner's husband has a criminal record including controlled substance offenses and the petitioner explained that she "did not want to

have a bank account with him with much money in it, because [she] feared he would take the money to buy drugs or something else which would not be helpful or responsible.”

The petitioner’s explanations, however, do not resolve the significant discrepancies and inconsistencies in her own statements and the lease, rent receipts and letters from Ms. [REDACTED] and Mr. [REDACTED]. In sum, the relevant documentation and testimony 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

We affirm the director’s determination that the petitioner did not establish that she entered into marriage with her husband in good faith. As discussed in the preceding section, the former couple’s 2002 joint tax return only included the petitioner’s income despite documentation in the record which shows that the petitioner’s husband was employed for at least part of that year. The [REDACTED] Communications customer ledger and joint bank account documentation also fail to provide probative evidence that the petitioner and her husband commingled their assets or shared liabilities. The photocopied photographs simply picture the former couple together on two occasions and the documentation of the former couple’s purported joint residence lacks credibility given the aforementioned discrepancies and inconsistencies. Moreover, the relevant documentation is not supported by probative, detailed testimony regarding the petitioner’s intentions in entering her marriage.

In her December 20, 2005 affidavits, the petitioner describes how she met her husband through a mutual friend, [REDACTED] and states that after about two months of dating, her husband proposed marriage and she accepted. The petitioner reports that Mr. [REDACTED] and Ms. [REDACTED] witnessed the former couple’s marriage and about ten guests attended their wedding and the ensuing celebration at the petitioner’s home. The petitioner states that after their marriage, her husband moved into her home, but she does not describe any of the former couple’s subsequent, shared experiences, apart from the alleged abuse.

Although the petitioner states that Mr. [REDACTED], Ms. [REDACTED] and approximately ten other individuals attended the former couple’s wedding, the petitioner submits supporting testimony from only three such attendees. Ms. [REDACTED], Ms. [REDACTED] and [REDACTED] simply state that they attended the wedding and that the former couple appeared to be very happy. They provide no detailed, probative information regarding the petitioner’s behavior before, during or after her marriage, which would indicate her intentions in marrying her husband. Although she is not required to do so, the petitioner does not explain why testimony from Mr. [REDACTED] or any of the remaining guests at her wedding is unobtainable. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

The statements of the petitioner’s mother, Mr. [REDACTED] and Ms. [REDACTED] are also of little probative value. The petitioner’s mother states that the petitioner called and informed her of the former couple’s marriage, but that after the marriage, the petitioner did not contact her again until she

called a few months later and said their marriage had failed. The petitioner's mother indicates that she did not attend the wedding or ever visit the former couple and she provides no insight into the petitioner's motivations for marrying D-B-. Mr. [REDACTED] stated that he is the brother of the petitioner's husband and that the former couple was married and lived together. He provided no details. In her letter dated June 27, 2003, [REDACTED] simply states that she has known the petitioner and her husband "for more than four years as my friend [sic] and lately as a couple." Ms. [REDACTED] merely states that she knew the former couple as "normally happy."

While the petitioner credibly explains her lack of further documentary evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii), the relevant documentation submitted, combined with her testimony and that of her friends and relatives, fails to provide detailed and probative information sufficient to establish that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the following, relevant evidence:

- The petitioner's December 20, 2005 and August 22, 2006 affidavits and her December 20, 2005 affidavit filed with the petitioner's complaint against her prior attorney;
- Four letters dated between February 5, 2004 and February 28, 2005 from the petitioner's former psychiatrist, Dr. [REDACTED] and corresponding records from Butler Hospital dated between October 22, 2003 and September 13, 2005;
- January 16, 2004 letter from the petitioner's former psychotherapist, Dr. [REDACTED] and [REDACTED];
- Letters from the petitioner's friends and relatives, Mr. [REDACTED], Ms. [REDACTED], Mr. [REDACTED], Ms. [REDACTED] and the petitioner's mother.

In her December 20, 2005 affidavits, the petitioner states that her husband lost his job a few months after their marriage and began to demand that she loan him money. The petitioner reports that her husband would go out on the weekends and return a day or two later intoxicated and that when she criticized his behavior, he would insult her and threaten to have her deported if she did not treat him well. The petitioner states that her husband accused her of infidelity, became suspicious when she went shopping and that she felt trapped and could not spend time with her friends. The petitioner says that her husband tried to hit her several times while intoxicated, but she was always able to evade him. The petitioner further states that her husband would yell at her son when her son came to her defense during the former couple's altercations and that her husband threatened to hurt her son if they did not cooperate with him. The petitioner explains that her son avoided being alone with her husband. The petitioner states that her husband "often threatened to hurt or kill [her] and [her] son," but she does not specify the substance or manner of any of these threats in detail. In February of 2003, the petitioner reports that she told her husband to leave after a serious argument, that he

refused but then left the next day. The petitioner states that soon after her husband's departure, she sought psychological help because she had become very anxious and fearful as a result of her husband's behavior.

The testimony of the petitioner's friends and relatives lacks probative detail and is, in part, inconsistent with several of the petitioner's own statements. The petitioner's mother indicates that the petitioner called her a few months after the marriage, told her the marriage had failed and that the former couple had decided to separate. The petitioner's mother says that the petitioner was very depressed by the separation and received medical treatment. As previously noted, however, the petitioner's mother indicates that she has never visited the petitioner in the United States and maintained only infrequent contact with the petitioner by telephone. Ms. [REDACTED] the petitioner's former coworker, states that after her marriage, the petitioner would be very upset, sad, depressed and would cry at work. Ms. [REDACTED] reports that the petitioner told her of "one or two occasions that [her husband] mistreated her verbally and psychologically," but Ms. [REDACTED] provides no details and does not indicate that she witnessed any incidents of abuse.

The statements of Ms. [REDACTED] are not entirely consistent with the petitioner's testimony. Ms. [REDACTED] states that she once went to the petitioner's house "to help her calm down" and the petitioner told Ms. [REDACTED] about her husband's verbal insults and threats. Ms. [REDACTED] reports that on unspecified occasions, she also brought the petitioner to stay at her home when the petitioner's husband threatened the petitioner's life. Ms. [REDACTED] states that the petitioner was scared that her husband "would kill her so she never went to the police." The petitioner herself, however, never discusses why she did not seek protection from law enforcement or other authorities.

Ms. [REDACTED] states that on a few unspecified occasions when she was at the petitioner's home, the petitioner's husband threatened the petitioner when she refused to give him money. Ms. [REDACTED] also states that the petitioner's son stayed at her home occasionally in order to avoid being alone with the petitioner's husband. However, Ms. [REDACTED] further states that the reason the petitioner sought medical attention was because she found out that her husband was having an affair and she was "scared of getting any kind of disease." Although the petitioner mentions her belief that her husband was seeing another woman, she does not discuss his affair as the reason she went to see a doctor. Rather, the petitioner states that she sought medical attention due to the psychological effects of her husband's "abuses and threats towards [her] and [her] son." Ms. [REDACTED] further states that some time after the former couple's separation, the petitioner told Ms. [REDACTED] that she was considering reconciling with her husband, but changed her mind when she went to meet him and saw him doing drugs. The petitioner does not mention this incident and states that after the former couple's separation, she saw him on only two occasions in March and August of 2003.

In her August 22, 2006 affidavit, the petitioner explains that her friends knew of the alleged abuse because she spoke to them about it, but that only [REDACTED] and Mr. [REDACTED] "personally witnessed problems between [the former couple]." The petitioner states that Ms. [REDACTED] "saw [D-B-] ask for money, verbally fighting with [the petitioner], threatening that he would report [her] to

Immigration or harm [her].” While Ms. [REDACTED] states that she was present on several unspecified occasions when the petitioner’s husband “started trea[t]ing her very bad and asking her for money” and said “he was going to beat her up” if she did not give him money, Ms. [REDACTED] does not indicate that she ever witnessed the petitioner’s husband threaten to report her to immigration authorities.

The petitioner also states that Mr. [REDACTED] “saw [D-B-] accuse [her] of having an inappropriate romantic relationship with [Mr. [REDACTED]], acting unreasonably jealous and controlling towards [the petitioner], using vulgar words in arguing with [her].” Yet Mr. [REDACTED]’s letters do not describe these behaviors. In his August 29, 2006 letter, Mr. [REDACTED] states that the petitioner “used to tell [him] that her husband told her” that he thought she and Mr. [REDACTED] were having an affair. Mr. [REDACTED] does not state that he actually saw the petitioner’s husband accuse her of having an affair with him. Mr. [REDACTED] describes only one incident where he witnessed the petitioner’s husband screaming at her when she had no money to give him and “telling her that he was not going to be home any more if she doesn’t do what he wants.” Contrary to the petitioner’s assertion, Mr. [REDACTED] does not discuss any incidents where the petitioner’s husband acted “unreasonably jealous and controlling” towards the petitioner and used “vulgar words” when arguing with her.

The testimony of [REDACTED] and Mr. [REDACTED] is also inconsistent with the petitioner’s claim, in her ten-page December 20, 2005 affidavit, that she “could not spend time with friends” due to her husband’s jealousy. Mr. [REDACTED] states that he “constantly visited” the petitioner and her husband. In her second letter, Ms. [REDACTED] specifically explains that after the petitioner told her of the alleged abuse, Ms. [REDACTED] started to visit the petitioner “more often because [she] became very worried for her and her son.”

In sum, the testimonial evidence fails to provide consistent, detailed and probative information sufficient to establish that the petitioner’s husband subjected her or her son to battery or extreme cruelty during their marriage. The remaining relevant evidence also fails to demonstrate the requisite abuse. The hospital records show that the petitioner first sought medical treatment on October 22, 2003 when she was diagnosed with major depression and prescribed medication. The October 22, 2003 psychiatric evaluation performed by Dr. [REDACTED] states that the petitioner reported verbal and emotional abuse by her husband. In his letters, Dr. [REDACTED] confirms the petitioner’s diagnosis and ongoing treatment and states that the petitioner reported verbal, emotional and financial abuse by her husband, which contributed to her mental health condition. Dr. [REDACTED] states that she saw the petitioner for five, one-hour sessions which focused on her husband’s verbal abuse. Dr. [REDACTED] briefly described the petitioner’s symptoms “of depression and posttraumatic stress disorder” and stated that the petitioner required psychotherapy for both illnesses. Yet Dr. [REDACTED]’s letters and the hospital records contain no diagnosis of post-traumatic stress disorder. While we do not discount their expertise, Dr. [REDACTED] and Dr. [REDACTED] provide little discussion of the petitioner’s physical and mental health and how what specific behaviors of the petitioner’s husband contributed to the petitioner’s condition. In addition, the diagnoses of Dr. [REDACTED] and Dr. [REDACTED] are inconsistent. Unlike Dr. [REDACTED] Dr. [REDACTED] does not state that the petitioner suffers from post-traumatic stress disorder.

In review, the petitioner has submitted statements that are inconsistent with those of three of her four supporting affiants on seven points. The hospital records and letters from the petitioner's psychiatrist and psychotherapist indicate that she suffered from major depression caused, in part, by her husband's behavior, but Dr. [REDACTED] and Dr. [REDACTED] provide inconsistent diagnoses of the petitioner's mental health condition and do not specifically describe the purported abuse. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner's former husband subjected her or her child to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated the requisite joint residence, good-faith entry into her marriage and battery or extreme cruelty. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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.