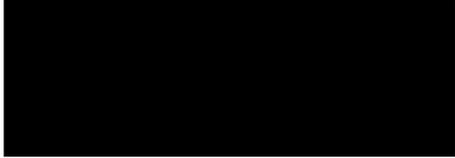


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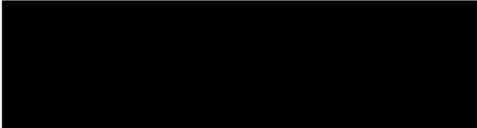
IN RE:

Petitioner:



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:



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*  
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), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition pursuant to section 204(c) of the Act because the record showed that the petitioner had previously sought immediate relative status as the spouse of a U.S. citizen by reason of a marriage entered into for the purpose of evading the immigration laws. The director further determined that the petitioner had not established the requisite good-faith entry into her marriage, residence with her husband and his battery or extreme cruelty.

On appeal, counsel submits a brief and an additional statement from the petitioner's husband.

#### I. Pertinent Facts and Procedural History

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of China. On July 1, 1998, the petitioner married R-L-,\* a U.S. citizen, in China. The petitioner entered the United States on August 17, 1999 as a conditional resident pursuant to the approved Form I-130, Petition for Alien Relative, filed by R-L- on her behalf. On June 7, 2001, the petitioner and her husband jointly filed a Form I-751, Petition to Remove the Conditions on Residence. The San Francisco, California District Office conducted two interviews with the former couple in regards to the Form I-751 petition. During the second interview, on May 17, 2005, the petitioner's husband withdrew his support of the Form I-751 petition and the petitioner and her husband both signed affidavits stating that the petitioner had paid her husband \$30,000 for the marriage and that they had never lived together. On that same date, the San Francisco District Office denied the Form I-751 petition and terminated the petitioner's conditional residency. On May 18, 2005, the petitioner was served with a Notice to Appear for removal proceedings charging her under section 237(a)(1)(D)(i) of the Act as an alien whose conditional residency has been terminated. The petitioner remains in proceedings before the San Francisco Immigration Court and her next hearing is scheduled for November 27, 2007.

This Form I-360 petition was filed on December 2, 2005. On May 23, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite joint residence, good-faith entry into the marriage, battery or extreme cruelty and pursuant to section 204(c) of the Act. The petitioner, through counsel, timely responded to the NOID with additional evidence. On September 21, 2006, the director denied the petition based on the grounds cited in the NOID. Counsel timely appealed. For the reasons discussed below, we affirm the director's determinations.

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\* Name withheld to protect individual's identity.

II. Section 204(c) of the Act

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws[.]

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states:

*Fraudulent marriage prohibition.* Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). Citizenship and Immigration Services (CIS) may rely on any relevant evidence in the record, including evidence from prior CIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975).

Our review of the record in this case indicates that the petitioner's marriage to R-L- was entered into for the purpose of evading the immigration laws and we are consequently barred from approving the instant petition pursuant to section 204(c) of the Act. The petitioner and her husband filed the Form I-751 petition with no supporting evidence. At the May 17, 2005 interview, the petitioner signed a sworn affidavit stating, "My aunt intruduce us to let me to the United States [sic]. I want to live in

the United States. I paid \$30,000 to [R-L-]. I want to live in the United States. I never live with him.” On that same date, the petitioner’s husband signed a sworn affidavit stating:

I married [the petitioner] . . . because my friend asked me to get married with his n[ie]ce and he would support me with money. . . . He offered me \$30,000 for the marriage. He paid me \$5,000 before I went to China. He paid me \$5,000 USA money in China. I spent it really fast. He paid me the rest of the money the first year. I lived with my parents then and I still do. [The petitioner] never lived with me. I never had sex with her.

In her initial declaration submitted with the instant petition, the petitioner states, “My parents thought that since I would be marrying and moving to America, away from remote China, they decided to give me a dowry. Raymond said \$30,000 should be enough.” In her second declaration submitted in response to the NOID, the petitioner claims that after she and her husband were introduced in China they “got along easily and spen[t] a lot of time together” and that after her husband returned to the United States, the former couple spoke on the telephone, “got to know each other very well [and], in the process, fell in love.” The petitioner reports, “Before we got married, in accordance to Chinese tradition, our families talked and my parents decided to give me, and my husband to be, [R-L-], \$30,000 as dowry or marriage gift money.” The petitioner explains that the former couple had a simple wedding ceremony and honeymooned at a hotel in Kai-Ping.

In her first declaration, the petitioner reports that after her arrival in the United States, her husband helped familiarize her with her new surroundings and that a week later, she began working at a restaurant. The petitioner describes one rainy evening when she was happy to find that her husband had unexpectedly come to pick her up from work. In her second declaration, the petitioner states that after her arrival in the United States, the former couple lived with her husband’s parents “and life was wonderful.” She reports that she and her husband “had many memorable experiences together,” but does not describe any of those experiences in detail. The petitioner indicates that she and her husband began to have problems due to her husband’s addiction to gambling and alcohol. She states that she moved out of her husband’s home in October 2003.

In regards to the May 17, 2005 interview regarding the former couple’s Form I-751 petition, the petitioner states in her first declaration that her husband “lost his patience to answer the questions. He decided not to go on . . . [and] made a lie that [they] never lived together.” The petitioner does not explain her own attestation on the same date that she never lived with her husband. In her second declaration, the petitioner states, “my lawyer was not with me to help me understand what was happening. I felt so much pressure and stress. I do not understand and speak English very well; therefore, I had a difficult time expressing myself . . . .”

In his June 18, 2006 declaration submitted in response to the NOID, the petitioner’s husband states that he was introduced to the petitioner through his friend and the petitioner’s aunt in China and that the former couple spoke on the telephone after he returned to the United States. He explains that he later decided to settle down and told his parents he was going to marry the petitioner. The

petitioner's husband also states, "In accordance to Chinese traditional practices, [the petitioner's] parents gave her dowry (marriage gift money) in the amount of \$30,000.00. Her parents wished us luck and hoped that the money would start off their daughter's life in the USA." The petitioner's husband claims that after the petitioner arrived in the United States, the former couple lived with his parents "and it went very well." He claims, "[w]e shared so many memories as a whole family, like birthday celebrations and family dinners," but he does not describe any of these events in probative detail.

The petitioner's husband admits that he became addicted to gambling and alcohol. He states that he lost the "dowry" money and withdrew money from the former couple's joint bank account and that his actions led to the former couple's separation. In regards to the May 17, 2005 interview, the petitioner's spouse states that he "denied the validity of [the] marriage because [he] was scared, weak and frustrated." He claims he now regrets his statements because "they were not true."<sup>1</sup>

In her June 3, 2006 statement also submitted in response to the NOID, the petitioner's mother-in-law claims, "[a]fter discussion by parents of both sides, and according to the Chinese tradition, [the petitioner's] parents offered \$30,000 as marriage gift money so that their daughter would have a better life in the U.S." The petitioner's mother-in-law reports that she and her husband lived with the former couple; that her son later spent all of the \$30,000 on gambling and that the petitioner moved out of their home in October 2003.

The statements of the petitioner, her husband and his mother submitted in these proceedings are also not supported by the relevant documentary evidence in the record, which consists of the following:

- Photocopies of bank statements for the former couple's joint checking account with Citibank dated November 9 to December 9, 2002; July 10 to October 8, 2003 and October 9, 2003 to June 26, 2005;
- Photocopies of joint income tax returns for the former couple from 2000 to 2004 and accompanying Form W-2 Wage and Tax Statements for the petitioner and her husband and Form 1099 Interest Income statements for the petitioner from the Bank of the Orient and the United Commercial Bank;
- Photocopy of the petitioner's dental insurance plan statement dated July 1, 2003 indicating that her husband was added to her plan on that date;
- Photocopy of the bill dated July 15, 1998 from a hotel in Kai Ping, China which lists the petitioner and her husband as the guests;
- Copies of photographs purportedly of the petitioner and her husband at unidentified occasions on unspecified dates; and

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<sup>1</sup> The director discounted the June 18, 2006 declaration of the petitioner's husband, in part, because the signature on the declaration did not match the signature on his May 17, 2005 affidavit. On appeal, the petitioner submits a third statement from her husband attesting to his signature on both prior documents.

- Photocopies of calling cards.

The tax returns, bank statements and the petitioner's dental insurance statement all fail to support the petitioner's claims. On the Form I-360, the petitioner stated that she lived with her husband from her arrival in the United States on August 17, 1999 to September 30, 2003 at a residence on Ramsell Street in San Francisco. Although the tax return forms and the bank statements attribute this residence to the former couple, the record contains no evidence that the tax returns were actually filed and the majority of the bank statements are dated after the couple's separation, purportedly at the end of September 2003. The statements covering the period of alleged joint residence show little usage of the account. The November 9 to December 9, 2002 statement reports only two transactions and an average daily balance of \$467.44. The petitioner does not account for the lack of bank statements for the seven months from December 9, 2002 to the next statement in the record for July 10 to August 10, 2003. In addition, the statements for July 10 to October 8, 2003 show only one transaction in July and September and just three transactions in August.

Moreover, while the 2002, 2003 and 2004 tax returns requested that the refund be deposited in the former couple's joint account at Citibank, the 2000 and 2001 tax returns requested that the refund be deposited in the petitioner's individual checking account at the Bank of the Orient. The record contains Form 1099 Interest Income statements and a bank record for the petitioner's individual accounts at the Bank of the Orient from 2000 through 2004.

The petitioner's Forms 1099 for 2000 through 2003 and her dental insurance statement are all addressed to the petitioner at 112 Persia Avenue in San Francisco, not the residence on Ramsell Street that the petitioner purportedly shared with her husband and his parents from August 1999 to October 2003. The dental insurance statement is also of little probative value because it states that the petitioner's coverage was effective on February 1, 2002, but that she did not add her husband to her policy until a year and a half later on July 1, 2003, just three months before their acknowledged separation.

The remaining, relevant evidence also fails to support the petitioner's claim. The hotel bill shows that the petitioner and her husband checked in on July 1 and departed on July 15, 1998. Yet the bill is unaccompanied by any detailed description by the petitioner or her husband of their purported honeymoon. In his June 18, 2006 declaration, the petitioner's husband merely states that the former couple got married, had a "simple ceremony and later [they] had [their] honeymoon in Kai-Ping." In her first declaration, the petitioner simply states that the former couple "spent the night" at the hotel in Kai Ping.

Except for two cards that show an expiration date of October 15, 1999, the calling cards are undated and are not attributed to the petitioner's husband or accompanied by any evidence that he used the cards to call the petitioner in China. The photographs are undated, unidentified and unaccompanied by any explanation as to their purported significance. While the copy of the passport of the petitioner's husband in the record shows that he briefly visited China in 1997 and 1998, the record is

devoid of any probative evidence of the former couple's purported courtship in the year between their acquaintance and marriage.

On appeal, counsel reiterates his claim that "the \$30,000 was given as a dowry, and not to obtain immigration benefits." Counsel asserts that in his May 17, 2005 statement, the petitioner's husband "never stated that he got paid to marry the Petitioner for immigration purposes, nor for the purpose of bringing the Petitioner to the United States. The \$30,000 was to support [R-L-] and the Petitioner" (emphasis in original). In response to the NOID, counsel submitted a document entitled "Dowry," which consists of passages discussing the cultural practice of dowry in China that are attributed to a book and Wikipedia. It is not clear if the document contains direct quotations or summaries of the cited sources. Without copies of the referenced portions of the actual sources, the "Dowry" document is of no probative value. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Regardless of whether the payment of \$30,000 is a credible example of a common Chinese custom, counsel's characterization of R-L-'s May 17, 2005 statement is unpersuasive. The petitioner's husband explicitly attested: "I married [the petitioner] because my friend asked me to get married with his n[ie]ce and he would support *me* with money" (emphasis added). The petitioner's husband stated that he was paid \$30,000 to marry the petitioner in installments in the United States and China.

Based upon a full and independent review, we find the record supports a finding that the petitioner and R-L- married solely to procure immigration benefits for the petitioner. The statements of the petitioner, her husband and her mother-in-law submitted in these proceedings are not supported by the relevant documentary evidence and lack sufficient weight to overcome the former couple's May 17, 2005 attestations. Accordingly, the director properly denied the instant petition pursuant to section 204(c) of the Act.

### III. Eligibility for Immigrant Classification Pursuant to Section 204(a)(1)(A)(iii) of the Act

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 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.

#### A. Entry into the Marriage in Good Faith

The petitioner and her husband signed affidavits on May 17, 2005 stating that the petitioner paid her husband \$30,000 for the marriage and that they never lived together. As discussed in Section II of this decision, the testimony and evidence submitted in these proceedings fail to overcome the May 17, 2005 attestations of the petitioner and her husband. In sum, the relevant evidence fails to establish that the petitioner entered into her second marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### B. Joint Residence

As previously discussed, the petitioner and her husband signed sworn affidavits on May 17, 2005 that they never lived together. In these proceedings, the petitioner claims that she lived with her husband for four years after her arrival in the United States. Although her husband and her mother-in-law also submit statements attesting to the former couple's joint residence, their testimony, as well as that of the petitioner, is not supported by the relevant, documentary evidence as discussed on page six of this decision. Accordingly, the petitioner has not established that she resided with her husband as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### C. Battery or Extreme Cruelty

The petitioner submitted the following evidence relevant to her claim that her husband subjected her to battery or extreme cruelty during their marriage:

- The petitioner's November 30, 2005 and July 17, 2006 declarations;
- June 18, 2006 declaration of the petitioner's husband;
- June 3, 2006 statement of the petitioner's mother-in-law;
- June 17, 2005 psychological consultation report regarding the petitioner's mental health by [REDACTED];
- [REDACTED] July 19, 2006 psychological consultation report regarding the petitioner's husband;
- Copy of the November 18, 2005 letter of [REDACTED] Chern, Staff Psychiatrist with Chinatown/North Beach Mental Health Services, San Francisco Department of Public Health;
- December 6, 2005 letter from Sister [REDACTED] Coordinator of Social Services at Saint Mary's Chinese Catholic Center in San Francisco; and
- November 30, 2005 letter from Virginia [REDACTED] at the Cameron House in San Francisco.

In her first declaration, the petitioner stated that she "got upset" because her husband was "addicted to smoking, drinking, and gambling." The petitioner reported that her husband told her that through his gambling he had lost all of their savings and put the former couple in debt. When the petitioner refused to give her husband more money for his gambling, she stated that the former couple "fought hard." The petitioner recounted that her husband would stay out all night and would not answer her calls. On one occasion, the petitioner stated that her husband came home drunk, told her that she had not brought him good luck and threatened that if creditors came, he would send them to her workplace until she paid them. The petitioner reported feeling frightened, nervous and unable to sleep. She stated that her husband became cold and the former couple could not sustain intimate relations. The petitioner provided no further details regarding her husband's purported abuse in her second declaration.

In his June 18, 2006 declaration, the petitioner's husband states that after he married the petitioner, he became addicted to gambling and drinking, "gambled away the dowry money," withdrew money from the former couple's joint account which he lost gambling and stayed out late. The petitioner's husband reports that his drinking and gambling "became a big issue" for the former couple and the petitioner moved out. The petitioner's mother-in-law also states that the former couple quarreled over R-L-'s gambling and drinking and that the petitioner moved out when she "could not bear it any longer."

In her initial report, [REDACTED] indicates that she interviewed and conducted psychological testing of the petitioner on June 1, 2005 upon referral by counsel's office. [REDACTED] reports that the petitioner stated that her husband was focused on gambling and drinking and "was mostly ignoring her, except for when the times [sic] he asked her for money." [REDACTED] further states that the petitioner indicated that she experienced "many symptoms of depression" that "were at their peak prior to her leaving her husband."

also noted, "While the immigration issue is not the cause of her emotional distress, [the petitioner] said the worries and anxiety over the possibility of deportation have added onto her high level of pain and anguish." After administering a nonverbal intelligence test, found it "possible that [the petitioner's] depressive symptoms [were] impacting her cognitive functioning."

In her assessment of the petitioner's husband, reports that the petitioner's husband acknowledged that his gambling and drinking habits caused conflict in his marriage. observed that the petitioner's husband "became very evasive and fidgety when asked about how he felt about his wife and his gambling issues."

confirmed that she was treating the petitioner for major depressive disorder without psychotic features through antidepressant medication and supportive psychotherapy. The submitted copy of letter does not indicate when the petitioner began treatment or provide any information regarding the causes of the petitioner's condition. Sister stated that the petitioner began attending the "Center's Problem Gambler's family support group since November 6, 2005" and that the petitioner left her husband because she could not "stand his gambling behaviors and to avoid further stress." verified that the petitioner began counseling sessions at Cameron House on October 12, 2005. stated that the petitioner's "overall rating . . . [was] good," but that she needed to continue her counseling sessions for unspecified reasons. provided no further details or insight into the petitioner's mental health condition.

The record indicates that the petitioner suffered from depression related to her husband's gambling and drinking and the resultant marital conflict. However, the evidence shows that the petitioner did not seek assistance until October 12, 2005, less than two months before this petition was filed. The petitioner provides no explanation for this chronology of events. The banking documents also fail to confirm the petitioner's claim that her husband lost the \$30,000 "dowry" through gambling because the highest balance reported on the Citibank statements covering the period of the former couple's alleged joint residence was \$2,276.43 on August 13, 2003. The petitioner submitted no statements from her individual accounts at the Bank of the Orient and the United Commercial Bank or any other documentation or explanation of how, specifically, the \$30,000 was obtained and spent by her husband. In sum, the relevant evidence fails to demonstrate that the actions of the petitioner's husband rose to the level of battery or extreme cruelty pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has not established that her husband subjected her to physical, psychological or sexual violence or that his nonviolent actions were part of an overall pattern of violence. Accordingly, the petitioner has failed to demonstrate that her husband subjected her 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 established that she entered into marriage with her husband in good faith, that she resided with him and that he subjected her to battery or extreme cruelty during their marriage. Accordingly, she is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Section 204(c) of the Act further bars approval of this petition because the record shows that the

petitioner was previously accorded immediate relative status by reason of a marriage determined to have been entered into to evade the immigration laws.

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.