

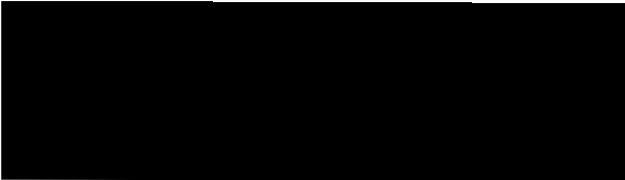
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



By

FILE: [Redacted]
EAC 07 003 50704

Office: VERMONT SERVICE CENTER

Date: OCT 08 2008
OCT 09 2008

IN RE: Petitioner:



PETITION: Petition for Special 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The director granted a subsequent motion to reopen and affirmed his prior decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

The director denied the petition finding that the petitioner failed to establish that her prior marriage had been legally terminated, that she was battered or subjected to extreme cruelty by her spouse during their marriage, and that she entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal with additional evidence.

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

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

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

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

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain

circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

(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 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.

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of ... the self-petitioner

* * *

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on

insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Nigeria who claims to have initially entered the United States on September 23, 1989 as a nonimmigrant visitor. The petitioner indicates that she divorced her first spouse, I-O,¹ in Nigeria in December 1990. The petitioner married her second husband, P-F,² on January 14, 1993. P-F- filed a Form I-130, Petition for Alien Relative on the petitioner's behalf on June 22, 1993. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. The Form I-130 was denied on May 31, 1995 and the Form I-485 was denied on July 21, 1995. The petitioner and P-F- were divorced on October 28, 1996. Less than two months later, on December 13, 1996, the petitioner married her third husband, I-A-³ a U.S. citizen, in Virginia. I-A- filed a Form I-130 petition on the petitioner's behalf on March 17, 1997. The petitioner filed a Form I-485 on that same date. The Form I-130 was denied on June 7, 1999. The Board of Immigration Appeals (BIA) dismissed the petitioner's subsequent appeal on June 29, 2000. On August 2, 2000, the petitioner's Form I-485 was denied. On February 21, 2006, Citizenship and Immigration Services (CIS) issued a Notice to Appear to the petitioner charging her as removable under section 237(a)(1)(B) of the Act for having remained in the United States beyond her period of authorized stay. She remains in proceedings and her next hearing is scheduled for October 14, 2008.

The petitioner filed the instant Form I-360 on September 29, 2006 claiming eligibility as the abused spouse of I-A-. On December 6, 2007, the director issued a Notice of Intent to Deny (NOID) which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish that her marriage to I-O- was legally terminated, that she resided with I-A-, that she was battered by or subjected to extreme cruelty by I-A- during their marriage, and that she entered into her marriage with I-A- in good faith. The petitioner responded to the director's NOID on January 8, 2008. The director denied the petition on March 3, 2008, finding that the petitioner failed to establish that her prior marriage to I-O- was terminated, that she was battered or subjected to extreme cruelty by I-A- during their marriage, and that she entered into her marriage with I-A- in good faith. The director granted the petitioner's subsequent motion to reopen and reaffirmed his previous determination to deny the Form I-360 petition. The petitioner, through counsel, filed a timely appeal, with additional evidence.

On appeal, counsel states that the documentary and testimonial evidence submitted in support of the petition are sufficient to establish the petitioner's eligibility. The petitioner also submits additional

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

³ Name withheld to protect individual's identity.

documents on appeal. As will be discussed, we concur with the determination of the director. The petitioner has failed to overcome this determination on appeal.

Qualifying Relationship and Eligibility for Classification

At issue is whether the petitioner has established that her marriage to I-O- was properly terminated. According to the Department of State Foreign Affairs Manual (FAM), the proper documentation for a customary divorce in Nigeria is a certificate of divorce rendered by a customary court, which will contain a true and certified copy of the proceedings.⁴ As will be discussed, although the petitioner has submitted numerous documents which she purports to be sufficient evidence of the legal termination of her marriage to I-O-, the documents contain numerous discrepancies which cast doubt on their validity, as well as the petitioner's credibility.

On the Form I-130 filed by P-F- on the petitioner's behalf, P-F- indicated that the petitioner's divorce from I-O- took place on December 2, 1990. In support of the petition the following documents were submitted: a "Re-Certificate of Divorce" from the High Court of Justice of the Plateau State of Nigeria and an "Affidavit of Dissolution of Marriage" from I-O- which both indicated that the marriage was terminated on December 2, 1990. In response to the NOID issued at that time, P-F- submitted a "Certificate of Divorce" for the petitioner and I-E-, not I-O-, as well as a "Claim" which also lists I-E- as the petitioner's former spouse. The director denied the Form I-130, finding that the evidence submitted was not sufficient to establish that the petitioner's marriage to I-O- was terminated in accordance with the law of Nigeria. In addition, the decision indicated that based upon the information submitted in response to the NOID, the record indicated that the petitioner had an additional unterminated marriage to I-E-.

The Form I-130 submitted by I-A- on the petitioner's behalf also indicated that the petitioner's marriage to I-O- was terminated on December 2, 1990. However, the "Certificate of Divorce," "Formal Order," and "Claim" submitted in support of this petition listed the date of divorce as December 5, 1990. In addition, the documents all listed I-O- as the plaintiff and the petitioner as the defendant. In response to the NOID, the petitioner submitted a new "Certificate of Divorce," "Formal Order," and "Claim," which, in contrast, listed the petitioner as the plaintiff and I-O- as the defendant. The director denied the Form I-130 petition finding that the evidence did not establish the legal termination of the petitioner's marriage to I-O- and that it did not conform to a genuine Nigerian customary divorce. The BIA, in its opinion dismissing I-A-'s appeal of the district director's decision on the Form I-130 petition, stated:

. . . [T]he [petitioner] has had two visa petitions filed on her behalf, and multiple opportunities to submit valid documentation proving that her marriage to an individual in Nigeria had been legally terminated. During the course of visa

⁴ Department of State Reciprocity Schedule, Nigeria, accessed at http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3640.html (October 9, 2008).

proceedings, [different spouses] have submitted affidavits, divorce certificates, and customary court orders, allegedly showing that the beneficiary legally divorced her prior spouse. However, the material inconsistencies between those purportedly official documents and their divergence from known standard reflected in the Foreign Affairs Manual gave the district director ample reason to doubt their authenticity. The documents reflect discrepant dates, variation in word usage, and various unreconcilable name spellings and usage of a first initial for the defendant spouse she claims to have divorced.

* * *

Most significantly, the record reflects that the [petitioner] entered the United States in 1989, a year before she was allegedly present in Nigeria participating in the divorce proceedings. We note that the earlier petition filed in behalf of the [petitioner] shows that [she] entered the United States on September 23, 1989. On this record, we cannot credit the parties' contentions that the beneficiary has obtained a legally valid divorce.

With the instant Form I-360, the petitioner submitted copies of a "Certificate of Divorce," a "Claim," and an "Affidavit as to Witness to Dissolution of Marriage." The "Certificate of Divorce" and "Claim" are entirely different from the other documents entitled "Certificate of Divorce" and "Claim" that were submitted with the petitioner's prior petitions.

Regarding these documents, in his NOID, the director stated:

Your record currently contains three different versions of documentation to establish that your marriage to [I-O-] was terminated. The authenticity of the documents cannot be verified, and the fact that multiple versions exists makes it impossible to discern which version, if any, is the true and correct version. Two major inconsistencies exist, namely the evidence relating to your physical location at the time of the proceedings and a discrepancy on the involved parties on the two other documents.

In response to the NOID, the petitioner submitted a January 7, 2008 affidavit in which she attempts to reconcile the numerous discrepancies contained in the record. As it relates to whether she was physically present during the divorce proceedings in Nigeria in December 1990, the petitioner states that she was granted advance parole and permitted to reenter the United States after she "traveled to Nigeria to finalize divorce proceedings with [I-O-]." Regarding the inconsistencies noted by the director among the various "Certificates of Divorce," and the fact that some of the certificates list the petitioner as the plaintiff while others list her as the defendant, the petitioner states that I-O- initiated the divorce proceedings which contained "numerous mistakes." The petitioner states that she then initiated proceedings and had "no control over the format of the final 'Certificate of Divorce.'"

In her April 3, 2008 affidavit submitted on motion, the petitioner contradicts the claims she made in her January 2008 affidavit, and stated that she “was not physically present in Nigeria when the divorce was finalized.” Regarding the documents that indicate that she was present during the proceedings, the petitioner stated:

In Nigeria, this statement can be used to describe the presence of family members being present on behalf of the plaintiff. Therefore, “plaintiff present with her counsel” simply meant that my family members were there with my attorney. It does not mean that I was physically present at the time.”

As it relates to her January 7, 2008 statement in which she claimed that she was in Nigeria during her divorce proceedings, the petitioner states on motion that the statement was incorrect and that she “could not remember the exact date when [she] was granted advance parole.” The petitioner reasserts these same explanations on appeal. We are not persuaded by her explanations. First, the “Claim” submitted by the petitioner at the time of filing specifically indicates that she was “present” and that she was represented by counsel. There is no convincing evidence that the petitioner was represented by family members as claimed. The petitioner’s claim that her family members were present in her place is even less convincing given the statement in the “Claim” submitted with the Form I-360 that the petitioner actually gave testimony at the divorce hearing. While we can acknowledge that the petitioner may have trouble remembering her actual dates of travel, we find it less convincing that she could have mistaken the fact as to whether or not she was physically present and gave testimony during the divorce proceeding. In addition, the “Affidavit as to Witness to Dissolution of Marriage” submitted at the time of filing the Form I-360 by the petitioner’s nephew, [REDACTED] explicitly states that he was present “in court with [his] Aunt [the petitioner] when this Honourable Court Divorce the marriage and refund the dowry” on December 5, 1990.

As documented above, the record contains numerous documents which the petitioner has purported to be evidence of her divorce in Nigeria. The documents, however, all of which reference suit number SBDC/202/90, contain significant discrepancies. The first discrepancy relates to the actual date of the petitioner’s divorce. Some documents list the date of divorce as December 2, 1990 while others list the date as December 5, 1990. The testimonial evidence contained in the record is equally inconsistent regarding the date of the divorce. For instance, a sworn declaration by [REDACTED] that was submitted in support of P-F’s Form I-130 listed the date of divorce as December 15, 1990, while the petitioner’s brother, [REDACTED], attested to the date as September 18, 1989. Certain court documents list the petitioner as plaintiff with a sum of \$200 being returned for her dowry while others list I-O- as plaintiff and the amount of the dowry as \$100. The “Claim” document states that she and I-O- have one son and three daughters, whereas she claimed to have had only two sons with I-O- on her 2006 affidavit. In addition, although some court documents indicate that the petitioner was present during the divorce proceedings and actually gave a statement, others are more equivocal. The testimonial evidence regarding the petitioner’s physical presence is equally inconsistent. For instance, although at the time of filing her Form I-360 the petitioner initially testified that she was present and gave testimony during the proceedings and submitted an affidavit from her nephew who attested to her physical presence, the

petitioner's more recent testimony indicates that she was, in fact, not present. Finally, in addition to all of the inconsistencies noted above regarding the petitioner's divorce from I-O-, various documents in the record also refer to the petitioner's divorce from I-E-.

Upon review, we find the petitioner's contradictory and self-serving explanations, such as her "incorrect" memory regarding whether she was actually present and gave testimony during the divorce proceedings insufficient to overcome the numerous discrepancies and contradictions contained in the record. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). CIS is entitled to question the authenticity of any foreign document of record that is relied upon to establish a familial relationship. *See Matter of Richard*, 18 I&N Dec. 208 (BIA 1982).

Accordingly, the petitioner has failed to establish that she had a qualifying relationship as the spouse of a United States citizen and that she was eligible for immigrant classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa), (cc) of the Act; 8 U.S.C. §§ 1154(a)(1)(A)(iii)(II)(aa), (cc).

Battery or Extreme Cruelty

In her September 27, 2006 affidavit, the petitioner claims that I-A- started to become abusive when they were unable to have a child. The petitioner states that on unspecified occasions, I-A- would call her names, lock her out of the house and threaten to have her deported. The petitioner claims that this "situation occurred three or four times a year" after they would have an argument but does not provide a description of any particular incident or details regarding their arguments. The petitioner then indicates that I-A- "started to stay outside the home often." The petitioner states that she became suspicious and found out that I-A- had married another woman in Nigeria. The petitioner describes two incidents in which she claims that she was physically assaulted by I-A-. She states that after the first incident, she was scared to call the police because she believed she would be deported. Regarding the second incident, the petitioner claims that I-A-'s business partner witnessed the incident and called the police.

The petitioner also submitted a copy of the Petition for Protection from Domestic Violence (protection petition) that she filed with the District Court of Maryland on April 13, 1999, as well as the judge's order granting the protective order and setting a date for a hearing. In the protection petition, the petitioner claimed one incident of physical abuse in 1996 and a second one in 1999, four days prior to filing the protection petition. The information provided by the petitioner on her protection petition is not consistent with the information contained in her affidavit. Specifically, although the petitioner never provided even an approximate date regarding the physical abuse, according to her affidavit, the two incidents of physical abuse both occurred prior to the petitioner leaving the United States to adopt a child in Nigeria. In contrast, the protection petition indicates that one incident occurred before she went to Nigeria while the second one occurred approximately two years after she returned from Nigeria in

1997

The petitioner also submitted an undated letter allegedly from I-A- which provides information to the petitioner regarding the belongings that I-A- put in a storage facility and which accuses the petitioner of having an affair. In addition, the petitioner submitted a letter from [REDACTED], General Overseer of the petitioner's church. In his letter, [REDACTED] states that he witnessed the petitioner's "marital struggles" and indicated that the petitioner "complained about [I-A-'s] infidelity and her endangered life," but does not elaborate on the petitioner's claims.

In his NOID, the director requested the petitioner to submit evidence "relating to the April 20, 1999 [protection order] hearing that was scheduled to take place . . . and any subsequent hearings that were scheduled or orders that were granted." Despite the director's specific request for evidence regarding the April 20, 1999 hearing, the petitioner submitted no further testimonial or documentary evidence regarding the hearing or to establish that a permanent order of protection was granted. The petitioner did, however, submit an evaluation from [REDACTED]. Based upon a single interview with the petitioner, [REDACTED] generally reports that the petitioner was called names, threatened, physically assaulted, socially isolated and taken advantage of sexually. In contrast to the petitioner's statement, [REDACTED] states that on "two occasions, the police were called, because of the severity of the domestic violence." In addition, although [REDACTED] reports two instances of alleged physical abuse, her evaluation describes only a single instance in which the petitioner claimed that I-A- hit her with a computer. In an addendum dated January 7, 2008, [REDACTED] lists names that the petitioner was called but provides no additional probative details about the petitioner's claims to demonstrate how Dr. Futeral reached her final conclusion that the petitioner "sustained extreme cruelty [through] psychological attacks, economic coercion . . . emotional abuse" and physical abuse.

In her April 3, 2008 affidavit submitted in support of her motion to reopen, despite the director's specific finding regarding the lack of evidence related to the final outcome of the petitioner's protection order, the petitioner again failed to provide any further testimony or documentation in regard to the hearing. Instead, the petitioner submitted a letter from [REDACTED] who writes about a meeting that he claims to have had with the petitioner and I-A- in June 1995. First, it must be noted that while [REDACTED] claims that the meeting with the petitioner and I-A- took place in June 1995 and that the petitioner was having problems with "her husband Isaac," that date is more than a year and a half prior to their marriage. In fact, the petitioner was still married to P-F- in June 1995. Second, the information provided in [REDACTED]'s letter does not support a finding of abuse. [REDACTED] further states that the meeting with the petitioner did not take place in "in a therapeutic setting" but was rather an "effort to assist both of them to resolve the conflict that they had." While [REDACTED] also states that he "discovered" that the petitioner was being verbally and emotionally abused and that I-A- threatened to divorce the petitioner because she could not conceive a child, like the evaluation and letter submitted by [REDACTED]'s letter contains no specific description of any incident to support a finding of verbal or emotional abuse. Finally, [REDACTED] letter does not reference any claim of physical abuse.

On appeal, counsel argues that the director inappropriately “discredited” the letter from [REDACTED] and states, “Contrary to the VSC’s perception, [REDACTED] is more than a mere family friend that made an informal visit to the couple in 1995.” We are not persuaded by counsel’s argument. First, Dr. [REDACTED] specifically indicated that his meeting with the petitioner was not in an actual “therapeutic setting” and gave no indication that his letter was written in a clinical sense as part of an overall psychological assessment or evaluation or ongoing therapy. Thus, the director’s conclusion that his letter was written “in the context of a family friend” is not without merit. While counsel asserts that Dr. [REDACTED] would be submitting a new letter on appeal to “elucidate his findings,” to date, no further letter has been received from [REDACTED]. More importantly, as we previously indicated, Dr. [REDACTED] claims to have met with the petitioner and I-A- on a date in which the petitioner was indisputably not married to I-A-, a fact that undermines the evidentiary value accorded to his letter.

As it relates to the evidence regarding the final outcome of the petitioner’s ex-parte protection order, whose importance the director referenced on at least three separate occasions, counsel claims that although the petitioner attempted to obtain the evidence from the court, it will take approximately 30 days to do so. To date, three months after the filing of the appeal, no further evidence has been received into the record regarding the final outcome of the protective order. We note that even if the petitioner did submit this additional evidence on appeal, the AAO would not consider it at this late date. In instances such as this one, where a petitioner has been put on notice of deficiencies in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). In response to the director’s statement in his decision regarding the petitioner’s failure to submit evidence of the police reports for the two incidents in which the petitioner claimed that the police were called, counsel again generally describes the petitioner’s unsuccessful attempt to obtain such evidence. To date, no further evidence regarding the police reports has been received.

Finally, although we acknowledge the petitioner’s submission of medical documents, the documents do not relate to the petitioner’s claim of battery, but rather, relate to the petitioner’s treatment for infertility. Although the petitioner claims that I-A- subjected her to extreme cruelty because of her infertility, the fact that the petitioner has demonstrated that she has been treated for infertility does not establish that she was subjected to extreme cruelty.

Upon review, we find that the petitioner’s testimony and the evidence submitted on her behalf lacks specific and detailed descriptions of the alleged battery and extreme cruelty. As it relates to a claim of battery, the record contains only the general claim that the petitioner was physically assaulted on two unspecified occasions, with no elaboration on either incident. The same is true regarding the petitioner’s claim of extreme cruelty. The general claims that the petitioner was called names, locked out of her home, that her spouse may have had an extra-marital relationship, and threatened her on unspecified occasions are not sufficient to establish that I-A-’s actions rose to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention,

psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Further, the description of I-A-'s non-physical behavior does not demonstrate that her actions were accompanied by coercive acts or threats of harm, or that her actions were aimed at ensuring dominance or control over the petitioner. While the insufficiency of the testimonial evidence alone is sufficient to support a finding that the petitioner has failed to meet her burden of proof, the inconsistencies noted between the petitioner's September 27, 2006 affidavit, [REDACTED] evaluation, and the petition for protective order regarding the petitioner's claim of battery would also preclude an affirmative finding on this issue. 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). Accordingly, we concur with the finding of the director that the petitioner has failed to establish that she was battered or subjected to extreme cruelty by I-A- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Marriage

In her September 27, 2006 affidavit, the petitioner claims that toward the end of her marriage to P-F-, she met I-A-, but provides no additional details about their courtship other than to state that after she and P-F- divorced, she "found [herself] in love with [I-A-]" and that they "understood each other very well." After their marriage, the petitioner states that she helped run I-A-'s office, and went to concerts, restaurants and walks in the park with him. In response to the director's NOID, the petitioner offered no further probative details regarding her feelings for I-A-, her reasons for marrying him, or their relationship together to demonstrate that she intended to share a life with him at the time of her marriage. On motion, the petitioner claims that her pursuit of infertility treatment during her marriage is evidence of her good faith intent in marrying I-A-. The petitioner provided no further testimony on appeal.

The documentary evidence contained in the record consists of joint bank statements and three utility bills addressed to the petitioner and I-A-. The petitioner does not submit evidence such as copies of returned checks to demonstrate that she and I-A- both accessed their bank account. In addition, the record also contains copies of I-A-'s 1997 state and federal tax returns in which he listed his filing status as "head of household" rather than as "married filing a joint return" or "married filing a separate return." Although she is not required to do so, the petitioner does not explain why additional evidence regarding her own tax returns does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

As discussed above, the petitioner has provided scant testimonial and documentary evidence of her intent to establish a life with I-A- at the time of her marriage. Moreover, as will be discussed later in this decision, the probative value of the tax returns and utility bills are diminished given that they are contradicted by other evidence contained in the record. Accordingly, we concur with the finding of the director that the petitioner failed to establish that she entered into her marriage with I-A- in good

faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, we find two additional issues that preclude approval of the petition.

Residence with I-A-

On the Form I-360, the petitioner initially indicated that she resided with I-A- from December 1996 until an unspecified date in 2000. The petitioner then indicated that she last resided with I-A- at [REDACTED] in Hyattsville, Maryland “until 1999.” In her September 27, 2006 statement submitted at the time of filing, the petitioner provided no probative information regarding her residence with I-A- or information to establish the specific dates of their residence. Rather, she stated only that although they “bought a house together . . . [I-A] said that [the petitioner’s] name could not be in the title”

As documentary evidence, the record contains joint bank statements and three utility bills addressed to the petitioner and I-A- at the claimed address, as well as the protective order filed by the petitioner against I-A- on April 13, 1999. The statements and bills cover an eight-month period from March 1997 through November 1997. However, despite the petitioner’s claim of residence with I-A- until at least 1999 or 2000, the record contains a copy of I-A-’s 1997 state and federal tax returns in which he listed his “home address” as [REDACTED] in Riverdale, Maryland. As previously noted, on these returns I-A- also listed his filing status as “head of household” rather than as “married filing a joint return” or “married filing a separate return.” Moreover, the record contains a copy of I-A-’s driver’s license that was submitted in support of the Form I-130 he filed on the petitioner’s behalf. The driver’s license, which was issued in Washington, D.C. on May 1, 1998, a time during which the petitioner claims to have been residing with I-A-, lists I-A-’s address as [REDACTED] Washington, D.C. 20002. The record also contains a copy of the petitioner’s 1998 Form W-2, Wage and Tax Statement, which lists her address as [REDACTED] in Riverdale, Maryland.

Based upon the above discussion, we find the record insufficient to establish that the petitioner resided with I-A- as claimed. The unexplained inconsistency regarding the actual date she claims to have ended her residence with I-A- (1999 versus an unspecified date in 2000) on the Form I-360 is not clarified in any of her affidavits. Further, the affidavits themselves contain no probative information regarding the claimed residence, such as a description of their home, shared possessions, or other details to establish the petitioner’s claim. More importantly, the tax returns and driver’s license submitted by I-A- in support of the petitioner’s I-130, as well as the petitioner’s 1998 W-2 form contradict the petitioner’s claim of residence at the listed address. The scant testimonial and documentary evidence regarding the petitioner’s residence is insufficient to establish that the petitioner has met her burden of proof. In addition to lacking sufficiency, the record contains noted discrepancies that cast doubt on the petitioner’s credibility on this issue as well as the petitioner’s other claims. Doubt cast on any aspect of the petitioner’s proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho* at 591-92. We therefore withdraw the director’s affirmative determination on this issue and find that the petitioner has failed to establish that she resided with her spouse, as required by section

204(a)(1)(A)(iii)(II)(dd) of the Act

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. As evidence of her good moral character, the petitioner provided a brief statement in which she indicated that she has never been arrested and has no criminal record. In addition, the petitioner submitted two letters from Maryland's Department of Public Safety and Correctional Services which indicated no criminal history based upon a check of the name "[REDACTED]".⁵ The record, however, reflects that in addition to [REDACTED] the petitioner has used or been identified by nine other names. Accordingly, we find that the police clearance, based upon the single name currently used by the petitioner, is not sufficient to establish her good moral character. We therefore withdraw the director's affirmative determination on this issue and find that the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁵ Although the petitioner submitted fingerprints to Maryland's Department of Public Safety and Correctional Services, notations to the card show that the criminal history check was based only on a "name check."