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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B4



APR 24 2009

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date:
EAC 07-096-50030

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:

SELF-REPRESENTED

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.

John F. Grissom
Acting 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 AAO will withdraw the director's decision. Because the petition is not approvable, however, it will be remanded for further action.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(A)(iii), as having been battered or subjected to extreme cruelty by her U.S. citizen spouse.

The director denied the petition finding that the petitioner failed to establish that she was a person of good moral character or resided with her U.S. citizen spouse. The petitioner submits a timely appeal with additional evidence.

We concur with the director's determination that the petitioner has not established that she is a person of good moral character and resided with her U.S. citizen spouse. Beyond the director's decision, we also find that the petitioner did not establish (1) that she had a qualifying relationship with a U.S. citizen, (2) that she was eligible for immediate relative classification based on such a relationship, (3) that she was battered or subjected to extreme cruelty by her U.S. citizen spouse and (4) that she entered into a qualifying relationship in good faith. Nonetheless, the case must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Eligibility for Immigrant Classification Under Section 204(a)(1)(A)(iii) of the Act

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. In addition, the petitioner 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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

* * *

(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.

(ii) *Relationship*. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also 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. . . . 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.

Procedural History and Pertinent Facts

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Dominican Republic who claims to have entered the United States without inspection on September 10, 1997. She states that she married H-F-¹ a U.S. citizen, on April 27, 2001 in Philadelphia. H-F- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, on April 30, 2001. On October 10, 2005, the Philadelphia District Office denied the I-130 Petition and the petitioner's concurrently filed Form I-485, Application to Adjust Status, due to the petitioner's failure to appear or otherwise respond to a notice for an interview.

The petitioner filed the instant I-360 Petition on February 16, 2007. On February 27, 2007 the director issued a Request for Evidence (RFE) of the petitioner's good moral character; in response, the petitioner, through counsel, submitted a request for additional time to provide clearance from the Pennsylvania State Police. The director issued a second RFE on August 24, 2007 again asking for evidence of good moral character. The director explained that prior forms submitted to U.S. Citizenship and Immigration Services (USCIS) by the petitioner or on her behalf listed her date of birth as April 6, 1961 rather than her birth date of October 14, 1961, and that all clearances, unless obtained by fingerprint analysis, must establish that the investigating agency was aware of the use of both birth dates as well as all aliases used by the petitioner.² The RFE also asked for an original marriage certificate because the copy previously submitted contained too many errors to be considered valid, evidence that the petitioner had resided with her spouse, evidence that the petitioner had been battered or subjected to extreme cruelty by her U.S. citizen spouse and evidence that she married her spouse in good faith.

The petitioner, through prior counsel, responded on November 19, 2007 by submitting (1) a police clearance from the Pennsylvania State Police based on a search of the petitioner's married and maiden names with her true date of birth, March 14, 1961; counsel stated that requests were pending for additional clearances under all aliases and dates of birth used by the petitioner; (2) copies of the marriage license and certificate previously submitted and a certified copy of a different marriage certificate with the same certificate number; and (3) various affidavits and other documents as evidence of joint residence, good faith marriage and abuse.

¹ Name withheld to protect individual's identity.

² The record reflects that the petitioner's true date of birth is March 14, 1961 and is listed on her passport and birth certificate; the October 14, 1961 date does not appear in the record other than in the director's decision; and the petitioner has used her maiden name and her married name.

The director found that the petitioner had established all of the eligibility requirements except the requirement to show that she had resided with her U.S. citizen spouse and that she was a person of good moral character. Accordingly, on March 21, 2008 the director denied the petition on those grounds. The petitioner appealed *pro se*, claiming that she previously submitted sufficient evidence of eligibility and providing additional evidence. The petitioner's statement and additional evidence submitted on appeal do not overcome the director's grounds for denial. Moreover, as discussed below, beyond the director's decision we find four additional grounds for denial.

Qualifying 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 petitioner. 8 C.F.R. § 204.2(c)(2)(ii). In this case, the petitioner initially submitted a copy of her application for a marriage license, dated April 24, 2001, and a copy of a marriage certificate that contained numerous errors. On the marriage certificate, the names of the bride and groom were written on the wrong line, the name of the clerk of the court was not provided where indicated, the day and month were transposed, and the address of the court was written where the form asked for the names of the bride and groom. In the RFE of August 24, 2007, described above, the director requested additional evidence that the petitioner had established a qualifying relationship with H-F- because of the errors in the copy of the couple's marriage certificate previously submitted; the director specifically noted that, because of all of the errors on the photocopy which raised questions about the validity of the document, an original marriage certificate must be submitted with all the required indicia of authenticity. In response the petitioner submitted copies of the same marriage certificate and a certified copy of a marriage certificate marked "duplicate," although the "duplicate," showing the same certificate number, had been rewritten to correct some of the errors in the version submitted previously. The submission of two different documents, alleged to be duplicate marriage certificates, and both containing errors, raises further questions as to the authenticity of the petitioner's marriage certificate and the credibility of the petitioner's claim that she has a valid marriage with H-F-. No further evidence of a valid marriage has been submitted on appeal.

The petitioner has not submitted sufficient proof of a legal marriage given the failure to provide an original marriage certificate, the discrepancies between the contents of the two photocopied versions of her marriage certificate and the errors in both versions. Accordingly, beyond the decision of the director, we find that the petitioner has not established the validity of her marriage to H-F- and she has consequently failed to demonstrate a qualifying relationship pursuant to section 204(a)(1)(A)(iii)(II) of the Act.

Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive U.S. citizen. As discussed in the preceding section, the petitioner has not

demonstrated that she had a qualifying relationship with H-F-. She consequently has also failed to establish that she was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Joint Residence

The record contains the following evidence relevant to the petitioner's claimed residence with H-F-:

- The petitioner's initial statement, dated August 2, 2006, in which she described how she met and married H-F- and the abuse she suffered. She described a time after they were married when H-G- was arrested and incarcerated for a few months in 2002. She stated that she found out she was pregnant in April 2003 and that she had a miscarriage and her loss was compounded because H-F- was arrested again in 2003, detained a few more months that year, and returned to live with her when he was released. She became pregnant again in early 2004. She described arguments with H-F- over his dangerous lifestyle, which would sometimes become heated; and that he would push her but not hit her. She claimed that H-F- was incarcerated again in 2004 for nine months, was absent when their child was born on October 31, 2004 and released in January 2005. She said she did not want him to move back in with her at that time, so she took his belongings to his sister's house; he called her when he was released to tell her to look outside her window and she saw he had slashed the tires of her car and smashed the window and headlights; he said next time it would be her. She stated that he returned to the house with his clothes and she agreed to take him back but told him that he would have to change and that next time she would throw his clothes out the window. She said H-F- then grabbed her by the throat as if to strangle her; she called the police to report the incident and had a restraining order placed against him, and that he continued to call her at home and threatened to kill her. She later filed for full custody of their daughter. They were scheduled to meet regarding custody on November 30, 2005; instead, he took their child and disappeared; and she filed another police report. He called from his mother's house to tell her to pick up the child, but when she went there, they argued and again he smashed the windows and headlights of her car. She said she went to the police station to file a report but nothing was done, and that was the last time she saw him.
- The birth certificate of the couple's daughter on October 31, 2004 in Philadelphia, listing H-F- as the child's father and providing the child's address as [REDACTED]
- A medical bill, dated May 22, 2003, addressed to the petitioner at [REDACTED] in Philadelphia for "echography transvaginal" and "echo pregnancy limited."

Copies of Form 1040 tax returns for 2001 and 2004; the 2001 form is stamped by the Internal Revenue Service showing receipt on April 13, 2002, the petitioner indicated she was married and filing a separate return, included the name of H-F- as her husband and provided her address as [REDACTED] in Philadelphia; the 2004 form is a copy of a joint return,

listing the couple as residing at [REDACTED] in Philadelphia.

- Statements by the petitioner's brother, [REDACTED] and two nieces, [REDACTED] and [REDACTED] noting addresses for the petitioner and H-F-.
- Court documents regarding the petitioner's request for a restraining order against H-F-, dated September 18, 2005; an emergency Ex Parte Order against him, dated September 19, 2005; and a Complaint for Custody of the couple's child by the petitioner "due to legal purposes," filed September 20, 2005. The former two documents indicate that the petitioner and H-F- both resided at [REDACTED] the latter states that the couple was separated and H-F- resided with his sister at [REDACTED] in Philadelphia.
- The petitioner's Form G-325A, Biographic Information, submitted with her I-485 Application, which states that she moved to [REDACTED] **in Philadelphia in February 2001 from the Bronx, New York;** and H-F-'s Form G-325A showing that he moved to [REDACTED] in April 2001.

On appeal, the following relevant evidence was submitted:

- Two additional Forms 1040 tax returns – for 2003 a joint return listing the couple's residence as [REDACTED] and for 2005 a joint return listing the couple's residence as [REDACTED] in Philadelphia.
- Copies of rent receipts for [REDACTED] in Philadelphia written out to Mr. and Mrs. H-F- or solely to H-F- for the months of July through November 2003 and from February through July 2004.
- A Copy of a lease agreement for an apartment at [REDACTED] for a year beginning October 1, 2004, showing the names and/or signatures of the petitioner and H-F-.
- Copies of letters from H-F- to the petitioner written while H-F- was incarcerated, dated in May and June 2004; envelopes showing H-F- as the sender, mailed to the petitioner at [REDACTED] [REDACTED] and postmarked by the Department of Corrections in April, May, June and July 2004; and one envelope postmarked in March 2002 sent to the petitioner at [REDACTED] [REDACTED]

On her I-360 Petition, the petitioner stated that she lived with H-F- beginning in April 2001; she does not, however, provide the dates she and H-F- resided together or any address of joint residence. On the Forms G-325A, Biographic Information, submitted by the petitioner and H-F-, they both claim to have resided at [REDACTED] in April 2001, and a letter from H-F- is addressed to the petitioner at that address from prison in 2002; there is no evidence, however, the H-F- ever resided at that address. For 2003 and 2004, the evidence is ambiguous. A 2003 joint tax return lists the

couple's residence as [REDACTED] and the petitioner submitted rent receipts for that address written out to her and to H-F- for the months of July through November 2003 and from February through July 2004; and a medical bill, dated May 22, 2003, is addressed to the petitioner at that address. However, the petitioner also submitted contradictory evidence – correspondence from prison from H-F-, dated or postmarked from April to July 2004 when he was clearly not residing with the petitioner. Moreover, the petitioner submitted a copy of a lease agreement for an apartment at [REDACTED] for the year beginning October 1, 2004, which, while it shows the names of the petitioner and H-F-, and two signatures, could not have been signed by her husband if he was incarcerated at that time as she claimed in her statement of August 2, 2006. Information in the court documents described above regarding the petitioner's request for a restraining order and for custody of the couple's child, filed in September 2005, was provided by the petitioner. She indicated either that the petitioner and H-F- both resided at [REDACTED] or that they were separated and H-F- lived with his sister. This information is also contradicted by the petitioner's August 2, 2006 statement that her husband did not reside with her after he was released from prison in January 2005. She claimed that when he was released, he vandalized her car and threatened her and then attacked her when she refused to allow him to live with her and her daughter. She also claimed that they last resided together at [REDACTED] in September 2005 and the last time she saw him was on November 30, 2005; on appeal, however, she submitted a 2005 joint tax return that listed the couple's residence as [REDACTED] in Philadelphia. The inconsistencies in the record raise questions as to the credibility of the petitioner's claim to having lived with H-F-.

Only three of the ten statements included in the record refer to the petitioner's address. Two were written by the petitioner's nieces, who claim that their aunt resided on [REDACTED] but they either provide no time frame or provide only the year as 2005. The third was written by the petitioner's brother, who claims that the couple resided in an apartment located on [REDACTED] which is not an address where the petitioner claimed to have resided. These statements add no detailed or probative information regarding when and where the couple lived together.

As noted above, there are various documents that may be submitted as evidence of joint residency, including 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. 8 C.F.R. § 204.2(c)(2)(iii). In this case, the petitioner claims that she and H-F- were married in April 2001 and that he was incarcerated for much of time they were together, including for her first pregnancy and a miscarriage in early 2003 and for the birth of their daughter in October 2004; she does not provide details of any time or place that they resided together. The affidavits submitted lack probative details; and the rent receipts and rental agreement are contradictory or otherwise not credible for the reasons noted above. Not one credible document has been submitted that shows H-F-'s name and address outside of prison other than those based on information provided by the petitioner, such as tax returns or court petitions.

While the petitioner is not required to have lived with her husband for any specific amount of time, her inconsistent statements regarding her and her husband's residence, the lack of relevant

information provided in supporting affidavits, and the failure to provide probative documentary evidence detract from the credibility of her claim. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with H-F-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Even if the petitioner established that she resided with H-F-, she has not shown that their marriage was valid. Accordingly, she has not demonstrated that she resided with H-F- as her “spouse” pursuant to section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In addition to the evidence described above, the record contains the following evidence relevant to the petitioner’s claim that H-F- battered and subjected her to extreme cruelty:

- The petitioner’s second statement, dated October 4, 2007, in which she responded to questions about abuse.
- Statements by the petitioner’s brother and sister and two nieces.

In her first statement, dated August 2, 2006 and described in the previous section, the petitioner claimed that H-G- was arrested and spent time incarcerated during each year from 2002 to 2005. She stated that she would argue with H-F- over his dangerous lifestyle; that these arguments would sometimes become heated; and that he would push her but not hit her. She claimed that H-F- was incarcerated in 2004 for nine months and remained incarcerated when their child was born on October 30, 2004 until approximately four months after her birth. She claimed that when he was released, in January 2005, she had moved his belongings to his sister’s house because she did not want him to live with her and their daughter, but that he slashed the tires of her car and smashed the window and headlights and threatened to do the same to her next time; when she told him he would have to change H-F- grabbed her by the throat as if to strangle her. She stated that she called the police to report the incident and had a restraining order placed against him, and that he continued to call her at home and threatened to kill her. She described a second incident on November 30, 2005 when H-G- took their child and disappeared and she filed another police report; when she went to pick up their child he again smashed the windows and headlights of her car.

In her second statement, dated October 4, 2007 and submitted in response to the director’s RFE of August 24, 2007, the petitioner provided some details of H-F-’s acts; some events she described were similar to the ones she described in her first statement, but with significant contradictions; she generally did not include specific dates or places. She claimed “everything started around the time their daughter was born . . . he wanted have me very dominated [sic] . . . talked to me in a very strong tone . . . would raise his voice at every incident. . . . would say ugly words. The fights were everyday more intense, . . . he made me have involuntary sex with him, he would get home drunk very late at night.” She claimed that he would stay out for three days, and when he would return he would ask for forgiveness, but in three days he would return to the same thing, and she was tired of living in

this situation and asked him to please leave but he refused. She stated that one night they had a fight and he went out with a knife and slashed all four tires on the car and she decided to file a complaint against him for domestic violence. She described a second incident when he wanted to see their daughter at her house and she refused and told him he could see her at family court, but he did not go and called her later to tell her to look out the back window, and this is when she saw the broken windshield of her car and he threatened to do these things every time he could not see his daughter. She described H-F- as very dominating, demanding that she, as his wife, obey him, and said there were many occasions when he would take her keys so she could not go out and, to prevent her from communicating with friends or family, he would on many occasions take the phone from her and throw it on the floor.

We note that her descriptions of events in her second statement were either not included in the petitioner's initial statement or are inconsistent with her initial statement. The contradictions raise doubts as to the credibility of the petitioner's accounts of H-F-'s actions. Most remarkable is her claim that all of the abuse started after their daughter was born, when she previously claimed either that H-F- did not reside with her after the birth of their daughter or that they had an unspecified amount of time together, claiming that after he was released from prison he attacked her when she told him he had to change his ways if he wanted to live with her. Her statement regarding this incident is ambiguous and does not clearly explain whether, after vandalizing her car and threatening her life, he was able to reside with the petitioner and their daughter when he was released from prison; moreover, the credibility of her account of this incident is called into question by her later description of the same event, but entirely unrelated to his release from prison. Regardless of the time frame, however, most of the abusive behavior she described in her second statement was not mentioned previously. Given her ambiguous account of H-F-'s return from prison in 2005 and whether he even resided with the petitioner after that and the contradictions in her testimony, her account of her husband's regular repetitive abuse is implausible, including her description of dominating behavior, refusal to let her leave the house or contact friends or relatives, more intense fights every day, returning home drunk at night and forcing her to have sex. In addition, although she claims to have filed at least two police reports regarding the incidents she described, she has not submitted any such reports.

Only four of the ten affidavits submitted on behalf of the petitioner mention abuse. The petitioner's brother [REDACTED] claims that one night the petitioner called him crying and upset because she and H-F- were fighting and he was threatening to physically hurt her; her niece [REDACTED] claims she heard from her cousins and the petitioner about how the petitioner was abused by her husband; her niece [REDACTED] states that in 2005 when she was vacationing at her aunt's house at [REDACTED] she witnessed abusive behavior by H-F-, claiming "when he would arrive we would get scared because he would start to fight and throw everything and mistreat my aunt. On appeal, the petitioner submits an additional statement, from her sister [REDACTED] who claims that the abuse started after the petitioner had her daughter. None of these statements provides relevant or probative details regarding any actions taken by H-F-, and other than [REDACTED], none of the petitioner's relatives claim to have personally witnessed any abuse.

The court documents in the record, described in the previous section, include the petitioner's account of her husband's abusive actions; her request for a restraining order against H-F- and the emergency Ex Parte Order against him were based on her account. The petition for custody and final custody order were for "legal reasons." The court documents, therefore, did not provide any additional details or shed any further light on any abusive actions that may have been taken by H-F-.

In sum, the relevant evidence fails to establish that H-F- subjected the petitioner to battery or extreme cruelty. Even if the petitioner demonstrated the requisite abuse, she has not established the validity of her marriage to H-F-. Accordingly, the petitioner has failed to establish that H-F- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) 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. The record indicates that the petitioner lived in Pennsylvania for the three years before the date she filed her self-petition, and she accordingly submitted a criminal record check indicating "no record" from the Pennsylvania State Police based on her name(s) and date of birth. However, the director noted that the petitioner has used an alternate birth date and additional aliases. The director explained that all clearances, unless obtained by fingerprint analysis, must establish that the investigating agency was aware of the use of both birth dates as well as all aliases used by the petitioner. In her statement submitted on appeal, the petitioner noted that further police checks were pending; no further clearances, however, have been submitted. Although the petitioner has submitted her own statement and numerous statements from friends regarding her good moral character, she has failed to provide all of the required police clearances or state-issued criminal background checks.

Accordingly, 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.

Conclusion

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).

For the reasons noted above, the AAO concurs with the director's decision that the petitioner has failed to establish by a preponderance of the evidence that she resided with her spouse and that she is a person of good moral character; and, beyond the director's decision, we also find that the petitioner did not establish that she had a qualifying relationship with a U.S. citizen husband, was eligible for immediate relative classification based on such a relationship and was subjected to battery or extreme cruelty by her U.S. citizen spouse during the relationship. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. The petition is not approvable for the above stated reasons, with each considered as an independent and alternative bar to approval.

Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID as required under former 8 C.F.R. § 204.2(c)(3)(ii)(2006). While it is no longer a regulatory requirement for petitions filed on or after June 18, 2007, a NOID is required in this case, as it was filed on February 16, 2007.

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

ORDER: The director's decision is withdrawn; however, the petition is currently not approvable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.