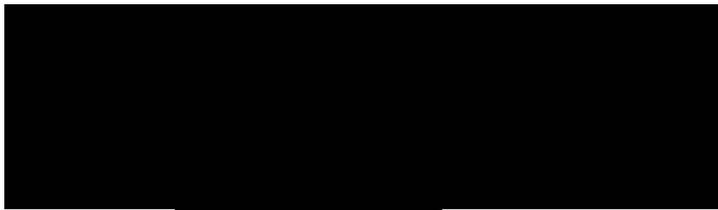




U.S. Citizenship  
and Immigration  
Services

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**APR 24 2009**

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:  
EAC 07-118-50011

IN RE: Petitioner: [REDACTED]

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

ON BEHALF OF PETITIONER:  
[REDACTED]

INSTRUCTIONS:

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

  
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 classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the abused spouse of a U.S. citizen. The director denied the petition because the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage and had entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

We concur with the director's determination that the petitioner has not established that she was battered or subjected to extreme cruelty by her spouse during their marriage and entered into her marriage in good faith. Counsel's claims and additional evidence on appeal do not overcome these grounds for denial. Beyond the director's decision, we also find that the petitioner did not establish that she is a person of good moral character. 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:

(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 filed 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.

\* \* \*

(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.

*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 Russia who was last admitted to the United States on March 23, 2005 with a K-3 non-immigrant visa as the spouse of a U.S. citizen; she was accompanied by her daughter, R-K-,<sup>1</sup> who was 18 years old at that time. The petitioner married R-R-<sup>2</sup> a U.S. citizen, in Cypress on June 9, 2003; they had met on the internet in March 2000 and first met in person in Russia in May 2000. The petitioner had been married before and divorced in Russia on June 19, 2001. R-R- filed for divorce from the petitioner on August 21, 2006; he died on October 1, 2007.

The petitioner filed the instant I-360 Petition on March 27, 2007. Evidence submitted with the I-360 Petition included (1) affidavits, dated March 17, 2007, by the petitioner, her daughter and a friend, Dmitri; (2) copies of a complaint and Petition for Protective Order against R-R- filed by R-K- in the Spotsylvania County Juvenile and Domestic Relations District Court on September 12, 2005 alleging that R-R- assaulted her on September 10, 2005; (3) a copy of a Preliminary Protective Order based on R-K-'s complaint issued against R-R- on September 12, 2005; and (4) a copy of a Complaint for Divorce by R-R- against the petitioner, filed on August 21, 2006, in which he alleges that the petitioner and her daughter conspired to have him falsely arrested and removed from his home on September 11, 2005 "by virtue of a preliminary Protective Order and a criminal warrant, the said criminal allegation being dismissed by the Juvenile & Domestic Relations District Court of Spotsylvania County, Virginia, and the preliminary Protective Order being dissolved by Order of said court." Counsel later submitted a psychological evaluation of the petitioner, dated April 16, 2007.

Upon review, the director found that the documentation submitted was insufficient or inconsistent and, on October 26, 2007, issued a Request for Evidence (RFE) of the petitioner's good moral character, that she married her spouse in good faith, and that she had been battered or subjected to extreme cruelty by her spouse. The director specifically indicated that the documents submitted previously contained different versions of the circumstances surrounding the alleged abuse and arrest of R-R- and requested a copy of the relevant police report and any final restraining order that might have been issued. In response, on January 18, 2008 the petitioner submitted three additional statements, dated in January 2008, by the petitioner, her daughter and their friend [REDACTED] regarding the incident of September 10, 2005, and a copy of a complaint and Petition for Protective Order against R-R- filed by the petitioner in the Spotsylvania County Juvenile and Domestic Relations District Court on September 16, 2005 alleging that "there had been escalation of violent and force sex," and describing the abuse that occurred on September 3, 2005. The petitioner also submitted a statement from [REDACTED] who claimed that she resided in Florida, has known the petitioner since May 1998 and R-R- since

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<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> Name withheld to protect individual's identity.

April 2001, and that she can verify that R-R- visited the petitioner in Russia numerous times from 2001 to 2003; R-R- gave the petitioner presents and money while spending substantial time in Russia courting the petitioner; and that she sat next to the couple numerous times at dinners and family celebrations and “can confirm the initial good intent of [R-R-] that he wanted [the petitioner] to become his wife.” The petitioner also submitted copies of criminal history records showing no criminal history in Virginia and Maryland based on a name search of “[REDACTED]” and “[REDACTED]” respectively; and evidence of her good faith entry into her marriage. The director found that the petitioner had failed to provide sufficient evidence of eligibility and denied the petition on February 15, 2008.

On appeal, counsel submits a brief, additional affidavits and photographs, a copy of a medical record showing that the petitioner received treatment for a migraine on October 23, 2005, and a medical record for R-K- showing that she had an exam on November 11, 2005 after a gym injury to her toe, along with a note from R-K- explaining that she made up the story for the doctor because she was embarrassed and that the injury was really connected to the incident with R-R- at their home. This evidence was later supplemented on June 16, 2008 by submission of (1) a copy of R-K-’s Request for Emergency Protective Order on September 10, 2005 and the resultant Emergency Protective Order to issue a warrant against R-R- and to restrain him from having any contact with R-K- from September 10 to September 13, 2005; (2) a copy of a warrant of arrest served on R-R- on September 11, 2005 for misdemeanor assault on family member; and (3) copies of the protective orders previously requested by the petitioner and her daughter containing the notation on each, “Dismissed. The Court finds Petitioner’s testimony not credible.” The notation is initialed by the judge and dated December 7, 2005.

Upon review of the entire record, we find that the evidence fails to establish that the petitioner was battered or subjected to extreme cruelty by her husband and that she entered into her marriage in good faith. Moreover, the petitioner has not established that she is a person of good moral character.

#### *Battery or Extreme Cruelty*

The record contains the following evidence, described above, relevant to the petitioner’s claim that R-R- battered and subjected her and her daughter to extreme cruelty:

- Affidavits from the petitioner, her daughter and three friends;
- Petitions for a protective order against R-R- filed in court on September 11, 2005 by the petitioner’s daughter and on September 16, 2005 by the petitioner; a warrant and *ex parte* preliminary protective order issued against R-R- based on those petitions; and final court determinations on December 15, 2005 dismissing the petitions, in which the judge determined that the petitioner and her daughter were not credible;
- A Psychological Evaluation of the petitioner dated April 16, 2007.

In her first affidavit, dated March 17, 2007, the petitioner stated that she met R-R- through the internet in March 2000, they became friends and met in person when he visited Moscow in May

2000 for two weeks; he gave her money, remained in contact when he returned to the United States, and visited again in September, 2000, when he gave her a diamond ring and proposed to her. When he visited again in December 2000, she introduced him to her family and friends. In 2003 they traveled to Cyprus and were married, and she came to the United States with her daughter when they got their visas in March 2005. She described him as generous and kind and a gentleman. She claimed that she was shocked when she saw how R-R- lived in the United States, in a filthy house with wretched furniture and two sick cats; and that when she said did not feel well from the trip and asked to see a doctor, R-R- flew into a rage, screaming that he did not have money to take care of her, and that when she said that she had been expecting something different, he pulled her over to a safe, removed a rifle, a pistol and a very large knife; she said she and her daughter were terrified. She went on to describe how R-R- controlled her and her daughter, including whom they could see and what they could do on a daily basis. She claimed that soon after their arrival, R-R- "began an insane, violent, sexual fetish with [her]," bruising and scratching her when they would sleep together and sometimes choking her during sex. She claimed she and her daughter were afraid to leave because they thought he would kill them; they lived that way for seven months and every day he would threaten to kill her and call her names; and some days he would lock them in the house, but "[they] could not leave, regardless; because of the beatings he would give [them] when he found [them]." She said when he would drink or take pills, he would break everything, kicking, punching, and screaming; and that one of those times, he pushed her daughter on the stairs and while she was running away from him, she fell and could not walk for two weeks. She described an incident on September 10, 2005, when R-R- woke up and began yelling and hitting and kicking, upset over some tickets that he bought for a concert that she and her daughter couldn't attend; she said her daughter called her friend, [REDACTED] so he could come over and be a witness, but as soon as he arrived, R-R- changed into his other self, calm and apologetic, until [REDACTED] left; R-R- left for work, and the petitioner and her daughter left the house and found a police officer, who told her to return home, wait for R-R- to return and then call the police. She stated that when he came home he was in a rage, she and her daughter had to lock themselves in a bedroom, she called 911, and the police came and took R-R- away.

Both the petitioner's daughter (R-K-) and [REDACTED] also submitted affidavits dated March 17, 2007. R-K- described how she and her mother met and enjoyed their time with R-R- in Russia and what happened when they arrived in the United States, claiming that R-R- picked them up at the airport, showed them the house and where to put their things and fell asleep; that her mother made dinner, and the next day they were a happy family. R-K- said that things changed quickly, that R-R- would go to work and leave them to clean the house and prepare dinner; did not take them out or show them around in their new country; and they had to buy groceries with their own money, walking three miles to the grocery store; that they weren't allowed any food in the evenings, and they had to stay home all the time; that she persuaded R-R- to enroll her at a local gym, but he wouldn't let her invite friends she met there to the house. She added that she would hear R-R- yelling at her mother and calling her names, and that her mother would come to her room with bruises on her body, crying and with welts around her neck as if she had been choked, and "it became an everyday thing, to threaten us with beatings, and kicking us out of the house." Regarding the incident on September 10, 2005, R-K- said that when she tried to stand up for her

mother, R-R- turned on her; she called [REDACTED] to come over, and R-K- calmed down when [REDACTED] was present, but when [REDACTED] left, he started screaming at her and her mother, threatening them and throwing their belongings everywhere; she said that R-R- left for a little while, and she called [REDACTED] to come back, but R-R- returned before [REDACTED] got there and R-R- told him never to return and [REDACTED] left. She claimed that she and her mother left the house then and called the police, R-R- was arrested that day, and she filed a temporary protective order against him on September 12, 2005.

The two affidavits described above are inconsistent internally and contradictory in many ways, including how many times [REDACTED] came to the house; when the police were called; whether R-R- allowed the petitioner and her daughter to shop on their own or prevented them from leaving the house; and whether R-R- pushed R-K- on the stairs causing an injury that prevented her from walking for two weeks, a material event that R-K- failed to mention. Other evidence in the record raises additional doubts as to the credibility of the petitioner's account of abuse she and her daughter suffered: [REDACTED] claimed in his affidavit that he was often invited by the petitioner and R-K- to their home, and when he learned how R-R- mistreated them, he would try to speak up for them and defend them. In his account of the events of September 10, 2005, he claimed that he stopped by their house on his way to work to drop off some DVDs for R-K- and heard screaming and yelling inside and saw R-R- storming in the living room and heard him screaming obscenities at the petitioner. He claimed that R-R- changed completely when he saw [REDACTED] and [REDACTED] left the house about a half hour later, but then got a call from R-K- who was crying; he said he started back to the house when he got a call from R-R- to tell him that he didn't mean all that happened earlier when [REDACTED] was there; that he was just tired. [REDACTED] claimed that he continued to the house and when he got there he saw pieces of furniture all around the place and could hear R-K- crying; that R-R- was not home, but that when R-R- returned in the evening, he began screaming at the petitioner and R-K- and told [REDACTED] he never wanted to see him again. As pointed out by the director, [REDACTED] account is not consistent with the accounts of the petitioner or her daughter.

Additional evidence submitted in response to the RFE also contradicts the petitioner's claim. Her daughter's medical record shows that R-K- went to the doctor on November 11, 2005 for an x-ray of her toe after a gym injury; there is no evidence of any treatment a month earlier or any mention of an earlier accident; in her daughter's petition for a preliminary protection order against R-R- due to the events of September 10, her description of the "family abuse" does not mention that he pushed her on the stairs or that she was injured; in fact, in response to the request to state the bodily injury she suffered, she answered "No physical Emotionally heart broken." In addition, based on information submitted on appeal, the preliminary protection order was dismissed in December 2005 after the judge found the testimony of the petitioner and her daughter not credible. The petitioner's request for a preliminary protection order, filed on September 16, 2005, fails to mention the events of September 10, but instead refers solely to "escalation of violent and force sex" and an incident on September 3, 2005 when her husband forced her to have rough, painful and violent sex. While the petitioner, her daughter, and [REDACTED] changed parts of their stories after inconsistencies were noted in the RFE, they failed to explain or fully address the previous inconsistencies and contradictions. The psychological evaluation

of the petitioner that was conducted in April 2007 is based on an interview with the petitioner and her account of abuse by her husband; the doctor's diagnosis of depression and post traumatic stress disorder also refers to this abuse and symptoms described by the petitioner. As the petitioner's claims of abuse have been found to lack credibility, the evaluation based on those claims cannot be given any weight as evidence of abuse in this case.

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).

On appeal, the petitioner submits an additional 15-page account of how she met R-R-; the meetings they had in Russia; the gifts and credit cards he gave her; how he lied to her before they were married; and how devastated she was when she and her daughter finally arrived in the United States to find a dirty house and abusive husband. However, the details she provides are again inconsistent with her original story and with her daughter's account of their arrival and treatment by R-R-, including the details of what happened when they arrived, when R-R- threatened them with a knife and gun and other details that form the basis of the petitioner's claim that she was abused. She adds new details of other incidents of forced sex and new details about assistance from another friend, [REDACTED] who helped her when she needed to go to the hospital in June 2005; she also retells the events of September 10, 2005, including claiming for the first time that R-R- ran after her daughter and pushed her daughter from the stairs, and that her daughter fell down and limped to her room. Contrary to her previous account and the accounts of her daughter and her friend, [REDACTED] she claimed that she and her daughter ran out to the street while R-R- was in the bedroom; they stayed out for two hours, came back to the house when R-R- was gone and called her friend [REDACTED]; later they called [REDACTED] who took them to the police; and later they called [REDACTED]. The petitioner submitted lengthy affidavits from [REDACTED] and [REDACTED] generally corroborating her account of events as she told them on appeal. However, the petitioner's revised account of events, which differ materially from prior accounts in the record, raises additional doubts as to the credibility of her claims. Moreover, she has failed to provide independent objective evidence to resolve the inconsistencies in the record.

In this case, new doubts have arisen on appeal. Neither the petitioner nor her daughter nor [REDACTED], who claimed to have witnessed R-R-'s abusive actions on September 10, 2005, mentioned the presence of the newly identified witness, [REDACTED] who, on appeal, claims to have spent the day with the petitioner and her daughter and to have taken them to the police.

The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The petitioner alleges an overall pattern of violence against her by her husband and indicates that his treatment of her and her daughter on September 10, 2005 is

relevant. However, her inconsistent testimony about the alleged actions of her husband on that day and the changing stories of her daughter and those who claimed to have witnessed violent behavior against the petitioner lessens the evidentiary value of all those affidavits submitted in support of her claim to have suffered abuse by her husband. The court with jurisdiction over the issuance of a protective order against her husband also found the petitioner's claims and the claims of her daughter not credible. While we recognize that the petitioner was severely disappointed in her husband and in her new life in the United States and suffered as a result, she has failed to provide evidence of battery or extreme cruelty by her husband.

In light of the multiple contradictions in the affidavits noted above, and the lack of any additional relevant documentation that demonstrates abuse in this case, we concur with the director's determination that the petitioner has failed to establish by a preponderance of the evidence that R-R- subjected her or her daughter to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Faith Entry into Marriage*

Evidence of good faith at the time of marriage may include 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 evidence include police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. 8 C.F.R. § 204.2(c)(2)(vii).

As evidence of her good faith marriage, in addition to the affidavits noted above, the petitioner submitted joint tax returns for 2003 and 2004; a copy of a power of attorney granted to R-R- by the petitioner on July 30, 2004 allowing him to act on her behalf in personal property, banking and insurance transactions with U.S. organizations; copies of eight receipts for money transfers from R-R- in Virginia to the petitioner in Russia, some of which are undated, and others dated in 2001 or 2002; copies of one credit card issued to R-R- in 2002 and two credit cards issued to the petitioner, one in 2004 and the other as a "member in good standing since 03/99"; and copies of photographs of the couple at various times and places, apparently in Russia or at their wedding in Cypress, between 2002 and 2005.

The photographs in the record confirm that the petitioner and R-R- met several times in Russia before they were married. The evidence also shows that during this time, R-R- gave the petitioner gifts of money, met her family and friends and stayed in contact; that after they married, but before the petitioner received her U.S. visa, she gave her husband legal authority to carry out certain transactions with U.S. organizations. The copies of jointly filed income tax forms lack evidentiary value as they falsely claim that the petitioner and her daughter resided with R-R- in Fredericksburg in 2003 and 2004, when the petitioner and her daughter actually arrived in the United States on March 23, 2005.

The affidavits in the record, from the petitioner, her daughter and one friend, who

claims to have personal knowledge of the relationship, offer few details regarding the petitioner's intent when she entered into her marriage. The petitioner claims that she met R-R- on the internet in 2000 and met him in person in Russia in May 2000. In her several affidavits, she describes the times she and R-R- spent together during his visits, noting that her poor command of English did not interfere with their communication; that R-R- was kind, generous, tender, caring and attentive and she liked him very much; and that he gave her cash, credit cards and other gifts and paid for their expenses when they were together. She states that they spent time in Moscow and on a later visit in her home city of Stavropol, where he met her friends and family; that R-R- hired an interpreter and gave gifts to everyone in her family, including rings with diamonds; he would describe his life in the United States, noting the beautiful city where he resided and the restaurant he owned; he bought her daughter, R-K-, expensive things and paid for English lessons for her. The petitioner claims that she was happy, loved R-K- and felt loved by him. She also noted that there were problems obtaining her fiancée visa and she eventually found out that R-R- was still married at that time and had not divorced until 2003; although she was upset with him for all of the delays in obtaining her immigration papers and for his lies, she agreed to marry him in Cypress in 2003 and then join him in the United States. When she arrived, she claimed she was immediately and extremely disappointed in his house, the city of Fredericksburg and her husband and the way he treated her. She devotes the majority of her statement to a detailed description of problems in their relationship and events leading up to her decision to leave R-R- and move with her daughter to a different residence in December 2005. Affidavits from the petitioner's daughter and from her friend [REDACTED] confirm the meetings in Russia and the gifts and good times they had while R-R- was visiting.

Other than claiming that the petitioner loved R-R- and that he was a good man, the statements in the record do not provide any information regarding the petitioner's feelings for R-R- before her marriage or why they became engaged or married or her plans for a future with her husband. The record also lacks credible documentary evidence of good faith other than photographs taken during R-R-'s visits to Russia that indicate that he and the petitioner enjoyed spending time together before they were married; the power of attorney is ambiguous regarding what transactions were contemplated and does not indicate that the petitioner or her husband were co-mingling any property.

The AAO recognizes that in this case the couple resided together only from March to September 2005 before the petitioner left her husband, and certain documents would understandably be lacking. However, the petitioner's description of the time she spent with R-R- from the time they met in 2000 until they married in 2003 contains few details or relevant information about the petitioner's plans for a future relationship with R-R-. When describing that time frame, the affidavits all focus on R-R-'s lavish spending and gift-giving during his brief visits and how generous he was.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the lack of probative detail and substantive information in the petitioner's testimony regarding the couple's engagement and shared experiences, other than those related to R-R-'s behavior and later abuse, significantly

detracts from the credibility of her claim.

Accordingly, we concur with the director that the petitioner has failed to establish by a preponderance of the evidence that she entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Good Moral Character*

Beyond the decision of the director, we find that the petitioner has failed to provide sufficient evidence of 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. In the RFE issued on October 26, 2007, the director explained that if the police clearance is researched by name only, rather than by fingerprints, the petitioner must provide all aliases used, including maiden and/or married names. The record indicates that the petitioner used her married name in the United States and abroad, yet she failed to provide that name to the law enforcement agencies in Virginia or Maryland for use in their review of records. The criminal record checks submitted from those states were, therefore, not based on accurate information, and are deficient for that reason. The petitioner has thus 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. We, therefore, withdraw the director's finding that the petitioner met this requirement.

### *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 was battered or subjected to extreme cruelty by her U.S. citizen spouse and that she entered into her marriage in good faith. Beyond the director's decision, we also find that the petitioner did not establish that she is a person of good moral character. Consequently, she is ineligible for immigrant classification under 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 March 27, 2007.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act.

**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.