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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

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APR 28 2009

FILE:

EAC 06 196 50179

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

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 appeal will be dismissed.

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

The director denied the petition because the petitioner did not establish that she resided with her husband and that her husband subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief and copies of documents previously submitted.

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.

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.

* * *

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Bosnia and Herzegovina who was admitted into the United States on June 9, 2002 as a nonimmigrant J-1 *au pair* for duration of status (D/S). On April 15, 2005, the petitioner married R-B¹, a U.S. citizen, in Miami, Oklahoma.

The petitioner filed the instant Form I-360 on June 5, 2006. On December 8, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite qualifying relationship, joint residency, battery or extreme cruelty, and good moral character. The petitioner timely responded to the NOID with additional evidence. On April 3, 2007, the director denied the

¹ Name withheld to protect individual's identity.

petition because the petitioner did not establish that she resided with her husband and that her husband subjected her to battery or extreme cruelty during their marriage. Counsel timely appealed.

On appeal, counsel claims that the director ignored the evidence, added requirements not in the law, and incorrectly applied the joint residence and extreme cruelty standards. As discussed below, counsel's claims on appeal fail to overcome the grounds for denial. Counsel further claims that the director erred under the Ninth Circuit Court of Appeals' decision in *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003), by adding a new joint residency requirement not in the law. As we discuss in detail below, *Hernandez* is not a precedent binding on this case and we find no error in the director's discretionary determination that the petitioner did not establish that she resided with her husband. Counsel's remaining claims and the evidence submitted on appeal also fail to establish the petitioner's husband subjected her to battery or extreme cruelty during their marriage.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- Page 3, Part 7. Section B. of the instant petition, on which the petitioner listed "N/A" for the period of time she lived with [R-B-], and wrote: "My husband abandoned me when I was pregnant, right after the wedding.";
- The petitioner's February 2, 2007 statement submitted in response to the NOID and the petitioner's undated statement submitted as an attachment to the appeal filed on May 4, 2007;
- The March 29, 2006 letter from [REDACTED] MA PLPC, Women's Therapist at Hope House, Inc.;
- The February 1, 2007 letter from [REDACTED] MALPC, Vice President of Clinical Services at Hope House in Independence, Missouri;
- A current balance statement from the Johnson County Health Department, postmarked on September 13, 2005, addressed to the petitioner at the "[REDACTED] address";
- A "Service Interruption Notice" from the City of Olathe, dated April 26, 2005, addressed to "R. [B-]" at the "[REDACTED] address";
- A bill from Atmos Energy, dated February 24, 2005, addressed to "[R-B-]" at the "[REDACTED] address"; and
- The petitioner's Form G-325A, Biographic Information, which she signed on May 30, 2006, and which does not include the "[REDACTED]" on her list of addresses for the last five years.

On appeal, counsel submits three previously submitted documents with the [REDACTED] address and asserts that this evidence shows "the petitioner was living with her husband [R-B-] from January to March of 2005." As discussed above, the petitioner and R-B- were married on April 15, 2005. As such, the January to March of 2005 period was prior to the marriage and thus does not count

as joint residence for 8 C.F.R. § 204.2(c)(1) purposes. Furthermore, the record contains unexplained inconsistencies regarding the petitioner's claimed joint residence with R-B-. For example, on the Form I-360, the petitioner wrote "N/A" on Page 3 for the period of time she lived with R-B-, explaining that R-B- abandoned her "when [she] was pregnant, right after the wedding." In addition, the petitioner did not list the "[REDACTED]" address on the list of addresses for the last five years on her G-325A, Biographic Information, form that she signed on May 30, 2006. In her February 2, 2007 and May 4, 2007 statements, the petitioner states that from January to March 2005, she saw the petitioner every other day, spent nights with the petitioner at his parents' "[REDACTED]" house, and that, sometimes before going to work in the morning, she stopped to get new clothes at her friend "[REDACTED]" house where she had her things. The petitioner explains that, as she "thought we are a couple living together" she used the "[REDACTED]" address on her marriage certificate and other mail. In her May 4, 2007 statement, the petitioner states that R-B- never introduced her to his parents, and that she did not meet them until after the birth of her child [on December 1, 2005]. "[REDACTED]", the women's therapist from Hope House, explains in her March 29, 2006 letter that the petitioner reported the following: the petitioner began dating R-B- in mid-January [2005]; the petitioner left her employer in February fearing that she would be deported, at which time she stayed in a hotel for five days and then went to the home of her Bosnian friend in Chicago; at the end of February the petitioner suspected she was pregnant and returned to her employer in Kansas; and the petitioner did not see R-B- in March, as her employer would not allow her to use the car for fear that INS was watching the house. This testimony is inconsistent with counsel and the petitioner's claim on appeal that the petitioner and R-B- resided together from January to March 2005. Moreover, as discussed above, the January to March of 2005 period was prior to the marriage and thus does not constitute residence for the purposes of 8 C.F.R. § 204.2(c)(1) purposes. It is also noted that "[REDACTED]" the counselor from "[REDACTED]" explains in her February 1, 2007 letter: "The [petitioner] stated that during the dating period, most of the couple's encounters were late at night due to their work schedules. [The petitioner] said that even after the couple had begun to be intimate, she would meet him at his house at his house at night when his family was already asleep, enter his room through his private entrance and never have contact with his parents." The petitioner has not established that these late night "encounters" (as described by Ms. "[REDACTED]" with R-B- constitute residence for the purposes of 8 C.F.R. § 204.2(c)(1), even if the petitioner and R-B- had been married during this period. While the petitioner is not required to have lived with her husband for any specific amount of time, the fact that the petitioner and R-B- were not married during the period of the claimed joint residence, and the unexplained inconsistencies discussed above, detract from the credibility of her testimony.

It is also noted that the "Service Interruption Notice" from the City of Olathe, dated April 26, 2005, addressed to "R. [B-]" at the "[REDACTED]" address and the bill from Atmos Energy, dated February 24, 2005, addressed to "[R-B-]" at the "[REDACTED]" address are presumably addressed to R-B-, Sr., the father of R-B-, as the house at "[REDACTED]" is that of the parents of R-B-. The record as it is presently constituted contains no documents addressed to the petitioner and R-B- as evidence of a joint residence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter*

of Laureano, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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). 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. at 591 (BIA 1988).

In sum, the relevant evidence contains unresolved inconsistencies and fails to demonstrate the petitioner's alleged residence with her husband. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

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

- The petitioner's February 2, 2007 statement submitted in response to the NOID and the petitioner's undated statement submitted as an attachment to the appeal filed on May 4, 2007;
- The March 29, 2006 letter from [REDACTED] MA PLPC, Women's Therapist at Hope House, Inc.;
- The February 1, 2007 letter from [REDACTED], MALPC, Vice President of Clinical Services at Hope House in Independence, Missouri; and
- The January 23, 2007 letter from [REDACTED], LMFT, Family Services Coordinator at the Johnson County Interfaith Hospitality Network, Inc. in Olathe, Kansas.

In her February 2, 2007 affidavit, the petitioner does not specify when she met R-B- but states that when they became close, she "stayed with him at his [parents'] house from January to March 2005." She explains that she went there in the evenings after work and left for work early in the morning and that during that time, she left her things at her friend [REDACTED] house and stopped there sometimes in the morning to get new clothes before going to work. The petitioner states that she got pregnant in February of 2005. The petitioner explains that she and R-B- discussed finding jobs in Chicago and that they decided she would go first and find a place, and he would follow. The petitioner explains further that she was in Chicago for two weeks and returned to Kansas City when her period was late, and she called R-B- after she found out she was pregnant. The petitioner states that R-B- was supportive at first and they started talking about moving in together. The petitioner explains that R-B- wanted to get married right away so they went to Oklahoma because a friend told them that in Oklahoma they would not have to wait. The petitioner explains that she thought they were "a couple living together" so she used R-B-'s parents' address on their marriage certificate and mail. The petitioner states that two weeks later, R-B- told her he wanted to get back with his old girlfriend, and

started yelling cuss words at her. The petitioner states, "I was really devastated when I figured out that [R-B-] and I weren't going to live together." The petitioner also states that she tried for several months to work it out with R-B- and sometimes he would say nice things but other times he would yell and cuss at her. The petitioner states that she did not call the police about the abuse and that she was afraid to call anyone because she was in the United States illegally. The petitioner explains that R-B- never actually hit her but he physically threatened her twice, once in front of a gas station and the other time in front of R-B-'s parents' house. The petitioner states that she "asked for affidavits from people that knew about my relationship with [R-B-], but everyone is too scared to give me one." The petitioner states that R-B- isolated her and made her feel like trash by keeping her from meeting and spending time with his parents, and that he had a different personality when he smoked marijuana. The petitioner also states that she sought refuge at a shelter.

In her May 4, 2007 affidavit, the petitioner states that she had dated R-B- since about January 2005 and "at first everything was wonderful" and they "became very close over the next few weeks." The petitioner explains that R-B- listened to her problems and wanted to help her. The petitioner states that she stayed in a hotel for a few days because she left the residence of her employers for fear of her safety and that, following R-B-'s encouragement, she spent some time in Chicago looking for employment, at which time she discovered that she was pregnant. The petitioner states that, upon the encouragement of R-B-, she returned to Kansas and married R-B- on April 15, 2005, and shortly thereafter R-B- abandoned her. The petitioner further explains that after R-B- abandoned her, he returned one time, told her loved her, had sex with her, and then disappeared again. The petitioner states that R-B- never introduced her to his parents and that when she gave birth to their child, R-B- was nowhere to be found. The petitioner explains that R-B- constantly lied to her and manipulated her to control her emotions and feelings. The petitioner reports that R-B- physically threatened her twice, the first time at a gas station, whereupon he got in her face, yelled at her, and "kept moving his hands around in a weird way, like he didn't know what to do with them," and the second time in front of R-B-'s parents' house, whereupon the petitioner wanted to introduce herself to R-B-'s mother, but R-B- prevented her from getting out of the car and "had a stick of wood that he was playing with in his hands and I was scared he was going to hit me with that." The petitioner states that when she tried to talk with R-B- about things, such as why he would not introduce her to his parents and why he would not return her phone calls, "he would become violent, yell at me, curse me and threaten to hurt me." The petitioner explained that R-B- never hurt her because she "was quick to leave when he became angry and agitated, fearing for my safety and especially the safety of our unborn daughter." The petitioner concludes, "The unexpected and total abandonment is part of my husband's overall pattern of control and is extreme cruelty: mental, emotional and also financial."

In addition to the evidence discussed above, the petitioner submitted a March 29, 2006 letter from [REDACTED] MA PLPC, Women's Therapist at [REDACTED], stating that on March 10, 2006, she conducted an assessment of the petitioner, a session which lasted one hour and 40 minutes. [REDACTED] states that the petitioner reported the following: the petitioner met R-B- at a gas station she patronized in her employer's car; R-B- was friendly over a six-month period; the petitioner started dating R-B- in mid-January [2005]; at the end of February [2005], the petitioner told R-B- she was pregnant, after

which he cussed and asked her if she was serious; the petitioner did not see R-B- in March because her employer would not let her drive the car, but she spoke to R-B- often on the telephone; on April 15, 2005 they drove to Oklahoma to get married; after the wedding ceremony, they drove back to Kansas and R-B- returned to his parents' house and the petitioner returned to her employer's house; after two weeks R-B- called the petitioner and told her he did not want to be married anymore, and he avoided the petitioner's subsequent phone calls; R-B- told the petitioner to stop calling him and informed her that he had a girlfriend and wanted a divorce; the petitioner was afraid that R-B- would take the baby away because she "didn't have the proper paperwork"; the petitioner left her employers because they did not want a baby there but they helped her find another job; after working for her new employer for four months, the petitioner left on her due date and had nowhere to go; the petitioner stayed at her friend's apartment; R-B- yelled at her and stated that his family was moving and then told her that his mother wanted to meet her; when the petitioner informed R-B- that their child could not visit him when he was smoking marijuana, he yelled at her to leave and thus she did not meet his mother; the petitioner was fearful that R-B- would get custody of their baby; R-B- has never seen or provided financial support for their child. ██████████ concludes: "In my professional opinion, [R-B-]'s treatment of [the petitioner] constitutes extreme mental cruelty."

In a February 1, 2007 letter, ██████████ MALPC, Vice President of Clinical Services, of Hope House in Independence, Missouri, states that she met with the petitioner for approximately two hours on January 26, 2007. ██████████ states that the petitioner reported the following: the petitioner and R-B- did not argue during their dating period and the only time he raised his voice or argued with her was when she asked about meeting his family or asked him to stop smoking marijuana; after his initial shock of her pregnancy, R-B- reassured the petitioner that he would take care of her and the baby; they were married at his suggestion and then they each returned to their separate homes, which surprised and saddened the petitioner; after two weeks the petitioner went to the gas station where R-B- worked and he harshly informed her that he no longer wanted to be married to her, after which the petitioner had a sick feeling that he would hit her if she said anything; R-B- called her and apologized for yelling at her; the petitioner "then recounted a long saga of her unsuccessful attempts to contact her husband and his then reappearing in her life to promise money and support and once again disappearing"; six weeks after the gas station incident, R-B- went to the apartment where the petitioner was staying, told her he loved her, had sex with her, and then disappeared and disconnected his telephone; R-B- has seen their baby only once since she was born. ██████████ finds that the petitioner "identified experiencing symptoms that ██████████ determine[d] to be consistent with Post Traumatic Stress Disorder [PTSD]." ██████████ concludes: "It is my professional opinion that not only is [the petitioner] a victim of extreme mental cruelty, she is also the parent of a child who has been and will continue to be subject to extreme cruelty by [R-B-]."

In this case, we do not find the petitioner's evidence to be credible or sufficient to meet the petitioner's burden of proof. It is noted that neither ██████████ nor ██████████ describes any physical abuse by the petitioner's husband. Nor do they describe any threatening behavior by R-B-, as claimed by the petitioner in her affidavits, such as "moving his hands around in a weird way" at the gas station and playing with a stick of wood like he was going to hit her in front of his parents' house. These

inconsistencies diminish the evidentiary value of the petitioner's testimony. While we do not question the expertise of [REDACTED] and [REDACTED] their testimony also fails to establish that the behavior of the petitioner's husband rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Although [REDACTED] determined the petitioner has PTSD symptoms and both [REDACTED] and [REDACTED] concluded that the petitioner is a victim of extreme mental cruelty, neither of them provides substantive, probative information indicating that the behavior of the petitioner's husband included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. Moreover, neither of them indicated that they treated or recommended any treatment for the petitioner's condition.

The record also contains a January 23, 2007 letter from [REDACTED], LMFT, Family Services Coordinator at the Johnson County Interfaith Hospitality Network, Inc. in Olathe, Kansas, who states that the petitioner and her daughter have stayed at their homeless shelter program since September 25, 2007, and that the petitioner reports that she was emotionally abused and abandoned by her husband. [REDACTED] also states that, as a part of their program, "they receive free overnight shelter, meals, case management and counseling services." While [REDACTED] indicates that case management and counseling services are available, she does not provide any details specific to the petitioner. Again, the petitioner has not demonstrated that her husband subjected her to battery or extreme cruelty during their marriage.

The petitioner's allegation of extreme cruelty is based upon the claims that her spouse yelled at her, lied to her, did not introduce her to his parents, provided no financial support for her and the baby, and abandoned her and the baby. As described, the actions by the petitioner's husband do not rise 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. The conflicting testimony made by the petitioner fails to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that her husband's non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner.

On appeal, counsel claims that the director erred under the Ninth Circuit Court of Appeals' decision in *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003), by adding a new joint residency requirement not in the law. In *Hernandez*, the court held that extreme cruelty can be assessed under objective standards and is a clinical, nondiscretionary determination subject to judicial review. As this case arose outside of the Ninth Circuit, *Hernandez* is not a binding precedent. Moreover, the Fifth and the Tenth Circuit Courts of Appeals have come to a contrary conclusion. *Wilmore v. Gonzales*, 455 F.3d 524, 527-28 (5th Cir. 2006); *Perales-Cumpean v. Gonzales*, 429 F.3d 977, 982-984 (10th Cir. 2005). Although *Wilmore* and *Perales-Cumpean* concerned applications for cancellation of removal, the both courts cited the definition of battery or extreme cruelty for self-petitioners at 8 C.F.R. § 204.2(c)(1)(vi) and found the definition "far from algorithmic" because it "requires consideration of many discretionary factors" and "does not provide a binding, objective standard that would channel the [agency's] discretion in a manner making it subject to judicial review." *Perales-Cumpean*, 429 F.3d at 984. *Accord Wilmore*,

455 F.3d at 527-28.

Even if *Hernandez* were binding on this case, the relevant evidence fails to establish that the petitioner's husband subjected her to extreme cruelty under the clinical and legal standards cited by the Ninth Circuit. As discussed above, the petitioner failed to describe in probative detail any specific threatening or controlling behavior of her husband. Nor did the petitioner demonstrate that his nonviolent actions and abandonment constituted psychological or sexual abuse or were otherwise part of an overall pattern of violence. *See Hernandez*, 345 F.3d at 836–41 (describing the cycle of domestic violence and interpreting the phrase “acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence” in 8 C.F.R. § 204.2(c)(1)(vi)). The petitioner does not claim and the record does not indicate that the petitioner's husband subjected her to battery. The relevant evidence also fails to demonstrate that the petitioner's husband subjected her to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that she resided with her husband and that her husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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

ORDER: The appeal is dismissed.