

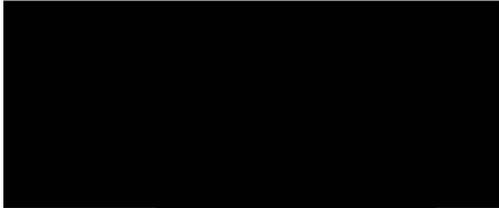
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

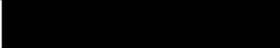
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090

**PUBLIC COPY**



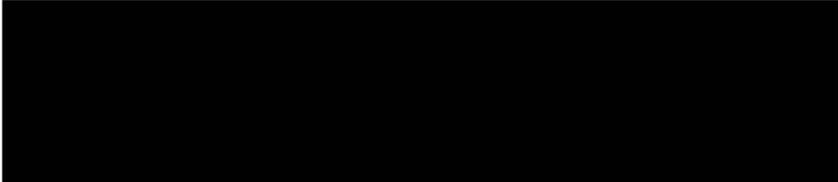
**U.S. Citizenship  
and Immigration  
Services**



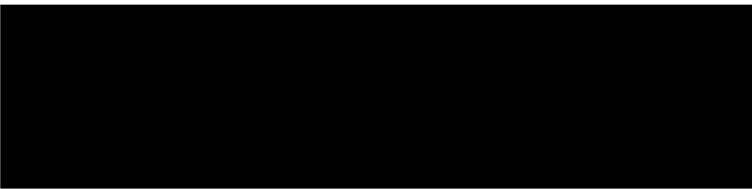
FILE:   
EAC 05 225 50156

Office: VERMONT SERVICE CENTER

Date: *By*  
JAN 07 2009

IN RE: Petitioner: 

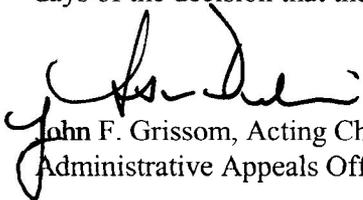
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 or reopen, 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 (U.S.) citizen.

The director denied the petition because the petitioner did not establish that she entered into marriage with her U.S. citizen spouse in good faith, that she resided with him and that her spouse battered or subjected her to extreme cruelty during their marriage.

On appeal, counsel submits a letter and additional evidence.

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

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) further 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.

\* \* \*

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to

establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

\* \* \*

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Ukraine who entered the United States on November 29, 2002 as the nonimmigrant fiancée (K-1) of T-R-.<sup>1</sup> On December 26, 2002, the petitioner married T-R-, a United States (U.S.) citizen, in California. On December 10, 2003, their marriage was dissolved.<sup>2</sup> The petitioner filed this Form I-360 *pro se* on August 8, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's residence with her former husband,<sup>3</sup> her entry into their marriage in good faith and that her former spouse subjected her to battery or extreme cruelty during the marriage. The petitioner responded with additional evidence. On May 17, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for, *inter alia*, lack of the requisite joint residence, good faith marriage and battery or extreme cruelty. The petitioner responded to the May 17, 2006 NOID with additional evidence. On August 30, 2006, the director issued a second NOID citing the same grounds for intended denial. The petitioner submitted evidence in response to the second NOID. Finding the evidence submitted insufficient to establish the requisite joint residence, good-faith entry into the marriage and battery or extreme cruelty, the director denied the petition on these three grounds on November 22, 2006. The petitioner timely appealed. Counsel subsequently entered her appearance and submitted additional evidence, which she claims establishes the petitioner's eligibility.

We concur with the director's determination and find that the evidence submitted on appeal fails to overcome the grounds for denial. Beyond the director's decision, the record also fails to establish that the petitioner had a qualifying relationship with her former husband and was eligible for immediate relative classification based upon such a relationship.

---

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

<sup>2</sup> Superior Court of California, Solano County, Case Number [REDACTED]

<sup>3</sup> The record shows that the petitioner has been married three times. In this decision, we will refer to T-R- as the petitioner's former husband.

*Entry into the Marriage in Good Faith*

The record contains the following evidence relevant to the petitioner's claimed entry into the marriage in good faith:

- The petitioner's August 3, 2005; April 23, 2006; October 10, 2006 letters submitted below and her affidavit submitted on appeal;
- Printouts of electronic mail messages from the petitioner's former husband to his parents and from his mother to the petitioner;
- Copy of a letter from the petitioner's spouse dated March 4, 2002 originally submitted with his Form I-129F, Petition for Alien Fiancée, on the petitioner's behalf.
- Four photographs and photocopies of photographs of the petitioner and her former husband and their purported bedroom;
- An undated, one-paragraph letter from the petitioner's friend, [REDACTED] submitted below and December 30, 2006 letter submitted on appeal;
- Two undated letters from the petitioner's friend, [REDACTED], submitted below and on appeal;
- Copy of a medical record for the petitioner dated January 24, 2003 from the Solano Regional Medical Group submitted on appeal; and
- Printouts of the petitioner's Russian bank statements which show withdrawals in U.S. dollars for cash and purchases made in the U.S. between December 2002 and March 2003.

In her August 3, 2005 letter, the petitioner stated that she exchanged over three hundred letters with her former husband and that he spent time with her friends and family during his visit to her in the Ukraine. She asserts that she answered his personal questions, kept no secrets from him and believed that they would share their lives together forever, but provided no further details. In her October 10, 2006 letter, the petitioner explains that she left her home, job and friends to live with her former husband and "blindly believed and loved" him, painted his home, bedroom furniture and made breakfast for him. Yet the petitioner provided no additional, detailed or probative description of how she met her husband, their correspondence, engagement and marriage.

In her affidavit submitted on appeal, the petitioner explains that she met her former husband through the *Matchmaker.com* website and reiterates that they wrote more than 300 letters to each other. However, the petitioner does not submit any of the former couple's correspondence from that time or explain her inability to obtain copies of their letters. The petitioner states that the former couple became engaged five days after her former spouse arrived and that they spent two weeks together visiting her friends and mother and discussing his three prior marriages. The petitioner states that her former spouse left her with \$300 and she obtained her fiancée visa a few months later. The petitioner reports that her husband met her at the airport upon her arrival in the United States, but was not as welcoming as she had expected. She describes cooking, cleaning and taking care of her former husband and his home and briefly discusses their marriage ceremony and visits to her friends in Los Angeles and to meet his parents. The petitioner reports that she once got sick and saw a doctor using

her former husband's insurance, but the medical record submitted on appeal does not include any insurance information. The petitioner provides no further details regarding the former couple's courtship, shared residence and experiences or her feelings and thoughts during their acquaintance, courtship and marriage, apart from the effects of her former husband's alleged abuse.

The remaining, relevant testimony fails to fully support the petitioner's claims. In her first letter, [REDACTED] merely states that the petitioner wrote to her about meeting her former husband, and told [REDACTED] that she loved him and was happy. In her second letter, [REDACTED] primarily discusses the alleged abuse and states that the petitioner came to the U.S. "with only good intentions and desire to live together with her husband in love and harmony." [REDACTED] provides no further, relevant information and does not indicate that she ever spoke to the petitioner during the petitioner's courtship, visited the petitioner during her marriage or had any other means of directly observing the petitioner's behavior or assessing her intentions in entering the marriage.

In her first letter, [REDACTED] merely states that the petitioner and her former husband resided together, but provides no information relevant to the petitioner's alleged entry into the marriage in good faith. In her second letter submitted on appeal, [REDACTED] briefly states that she spoke to the petitioner over the telephone and learned of the petitioner's acquaintance with her former husband and his visit. [REDACTED] asserts that she realized the petitioner was in love because "she was telling me about that with anxiety." [REDACTED] briefly describes the former couple's visit to her in Los Angeles, but does not describe the petitioner's behavior or interactions with her former husband in any probative detail.

The remaining, relevant evidence also fails to establish the petitioner's claim. The photographs show the petitioner and her former husband together during his visit to her in the Ukraine and on two or three other, unidentified occasions. The petitioner also submitted a photocopy of the former couple's alleged bedroom which shows a shelf with a framed photograph that the petitioner states is of herself and her former husband, but which is too small to be so identified. In sum, the photographs show that the petitioner and her husband were pictured together on a few occasions, but are insufficient to establish the petitioner's good faith in entering the marriage. The March 4, 2002 letter from the petitioner's former spouse and the electronic mail messages from him and his mother provide evidence of the petitioner's husband and his mother's affection for the petitioner at the time of the correspondence, but do not establish the petitioner's own feelings or intentions regarding the former couple's courtship and marriage. Finally, the petitioner's bank statements show that she withdrew money from her account during the time of her marriage for cash and purchases from stores in the U.S., but the statements do not demonstrate that the purchases were made for the former couple's home or otherwise provide evidence that the petitioner shared her assets with her former husband.

While the short duration of the petitioner's marriage may account for the lack of joint documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii), the testimonial evidence submitted fails to provide detailed, probative accounts of the former couple's meeting, courtship, wedding and shared experiences sufficient to establish the petitioner's claim. Accordingly, the record does not demonstrate

that the petitioner entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Joint Residence*

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

- The petitioner's August 3, 2005; April 23, 2006; October 10, 2006 letters submitted below and her affidavit submitted on appeal;
- Four photographs and photocopies of photographs of the petitioner and her former husband and their bedroom;
- An undated, one-paragraph letter from the petitioner's friend, \_\_\_\_\_ submitted below and December 30, 2006 letter submitted on appeal;
- Two undated letters from the petitioner's friend, A \_\_\_\_\_ submitted below and on appeal;
- Printout of an electronic mail message from \_\_\_\_\_ to counsel confirming the petitioner's enrollment in English as a Second Language (ESL) classes at an unidentified school from January through February 2003;
- Copy of a medical record for the petitioner dated January 24, 2003 from the Solano Regional Medical Group submitted on appeal; and
- Printouts of the petitioner's Russian bank statements which show withdrawals in U.S. dollars for cash and purchases made in the U.S. between December 2002 and March 2003.

On the Form I-360, the petitioner stated that she lived with her former husband in Fairfield, California from July 2002 until April 2003. However, the record shows that the petitioner did not arrive in the United States until November 2002. **The petitioner does not explain this discrepancy.** In her statements, the petitioner describes her husband's home as old and simple, but does not provide any detailed discussion of the house. She states that she purchased groceries and other items for the former couple and cooked, cleaned and painted parts of the house, but the petitioner does not further describe the former couple's shared residence in any probative detail.

In her first letter, \_\_\_\_\_ attests that the petitioner and her former husband resided together from July 2002 through April 2003 at the petitioner's former husband's home in Fairfield, California, although the record shows the petitioner did not arrive in the United States until November 2002. In her second letter, \_\_\_\_\_ indicates that she never visited the petitioner at the former couple's home and was only in occasional contact with the petitioner by telephone. In her second letter, \_\_\_\_\_z also indicates that she never visited the petitioner at her marital residence and first contacted the petitioner by telephone in February 2003.

The medical record and bank statements show that the petitioner once received medical care and made several purchases in California during her marriage. The electronic mail message from \_\_\_\_\_

confirms that the petitioner took ESL classes at an unspecified school during her marriage, but the message contains no further, relevant registration information. None of these documents list the petitioner's address or provide any other evidence of her shared residence with her former husband. As discussed in the preceding section, only one of the photographs is identified as being taken in the former couple's home, but the framed picture within the photograph, purportedly of the petitioner and her former husband, is too small to be clearly identified. The petitioner submitted no other evidence of joint residence of the types listed in the RFE, the May 17, 2006 NOID and the regulation at 8 C.F.R. § 204.2(c)(2)(iii). Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

While the petitioner describes living with her former husband, the majority of her testimony focuses on the purported abuse and does not provide detailed information about their shared residence. The remaining, relevant evidence also fails to establish the petitioner's claim. Accordingly, the petitioner has not demonstrated that she resided with her former husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Battery or Extreme Cruelty*

The record contains the following evidence relevant to the petitioner's claim that her former husband subjected her to battery or extreme cruelty during their marriage:

- The petitioner's August 3, 2005; April 23, 2006; October 10, 2006 letters submitted below and her affidavit submitted on appeal;
- Certified translations of five excerpts from the petitioner's diary from December 4, 2002 to February 3, 2003;
- July 11, 2006 and October 4, 2006 letters from \_\_\_\_\_ of the Angel of Hope Wellness Center;
- An undated, one-paragraph letter from the petitioner's friend, \_\_\_\_\_ submitted below and December 30, 2006 letter submitted on appeal;
- Two undated letters from the petitioner's friend, \_\_\_\_\_ submitted below and on appeal;
- Printout of an electronic mail message from \_\_\_\_\_ to counsel confirming the petitioner's enrollment in English as a Second Language (ESL) classes at an unidentified school from January through February 2003;
- Copy of a medical record for the petitioner dated January 24, 2003 from the Solano Regional Medical Group submitted on appeal; and
- Printouts of the petitioner's Russian bank statements which show withdrawals in U.S. dollars for cash and purchases made in the U.S. between December 2002 and March 2003.

In her letters submitted below, the petitioner provided cursory and conflicting accounts of her former husband's abuse. In her August 3, 2005 letter the petitioner stated, "I was battered in the USA." She

states that her former husband did not allow her to obtain a driver's license or social security card and threatened that he could kill her. The petitioner reported that after "several months of verbal and physical abuse," her former husband handed her a ticket to return to the Ukraine. In her April 23, 2006 letter, the petitioner states that she called a social services agency and described her husband's behavior. The petitioner explains that the agency advised her to call the police, but she too afraid. She reports that her husband agreed to change her ticket to Chicago where she stayed with friends who took her to see a doctor who diagnosed her with depression. In her October 10, 2006 letter, the petitioner states that she "was forbidden any contacts with the outside world" and that her former husband "understood that if he would hit [her she] could prove his physical abuse really easy, so he did everything he could to hurt [her] emotionally and morally . . . ."

In her affidavit submitted on appeal, the petitioner states that after her arrival, but prior to their marriage, her former husband purchased groceries for them on only one occasion and she had to use her own money for their food and expenses. The petitioner also describes one incident where she refused to perform oral sex and her former husband yelled at her. The petitioner further states that her former husband once demanded that she give him a head massage and made her mop the floors at his workplace.

After their marriage, the petitioner states that her former husband delayed sending her "documents for legalization," which were returned twice. The petitioner states that in January 2003, she got sick and lost her hearing. She states that her husband took her to the doctor and used his insurance for her treatment. That same month, the petitioner states that her husband complied with her request to enroll her in an English language school. The petitioner reports one occasion where she invited a Russian friend to their home, but her former husband swore and yelled that he did not want any guests in his house.

The petitioner then states that in February 2003 "constant scandals became a common thing" and that she felt enslaved, yet the petitioner does not describe any specific incidents of abuse that occurred during this time. The petitioner again describes calling the social services agency for help, but explains that when she was advised to call the police, take her things and leave with them, she did not call because she had too many belongings and she thought the police would not believe her regarding her former husband's alleged abuse. In March 2003, the petitioner states that she slept apart from her former husband and that he frequently lost his temper, yelled, and threw things, although she does not describe any incidents in particular where her husband threw objects or otherwise directed violence at her. She reports that her husband told her that he could kill her and no one would look for her, but she does not describe the context of his threat in probative detail. A few days later, the petitioner reports that her husband bought her a ticket to Kiev and told her he did not need her anymore and she could return home. The petitioner again explains that she instead flew to Chicago and stayed with friends. After a few weeks, her husband started to contact her saying he still loved her and the petitioner considered reconciliation until she learned in May 2004 that he had obtained a divorce. The petitioner states that she has suffered from hypertension as a result of her marriage and that in 2006 she saw a cardiologist and the psychiatrist, [REDACTED]

The excerpts from the petitioner's diary briefly describe her former husband being in a bad mood and mention the former couple fighting on two occasions. The excerpts do not describe any particular incidents of battery or extreme cruelty in probative detail.

In her July 11, 2006 letter, [REDACTED] diagnoses the petitioner with posttraumatic stress disorder, battered women syndrome and generalized anxiety disorder and states that the petitioner is taking medication for depression, anxiety and insomnia. [REDACTED] states her belief that the petitioner's psychological condition "may have been substantially influenced by the emotional abuse she experienced while married" to her former husband. [REDACTED] only briefly describes the petitioner's marital experiences as related to her by the petitioner and does not indicate the number of visits or duration of her treatment of the petitioner. In her October 4, 2006 letter, [REDACTED] states that she began seeing the petitioner in July 10, 2006 and continues to treat the petitioner for symptoms related to the emotional abuse she endured during her marriage. Again, [REDACTED] does not indicate the duration or frequency of the petitioner's visits and she provides no further discussion of the alleged abuse. While we do not question [REDACTED]'s expertise, we note that the petitioner did not see [REDACTED] until over three years after she left her former husband and after the director issued an RFE and two NOIDs requesting further evidence of battery or extreme cruelty.

The letters of [REDACTED] and [REDACTED] are consistent with the petitioner's account of the alleged abuse, but fail to provide further, detailed testimony sufficient to establish the petitioner's claim. [REDACTED] states that the petitioner told her over the telephone that she had to cook, do the laundry, clean the house and that her former husband was threatening her and that she was sleeping in another room. Ms. [REDACTED] states that she told the petitioner to call a women's rights organization for help, but that the petitioner told her that the organization told her to call the police and she had too many things to leave that way. [REDACTED] then learned that the petitioner persuaded her former husband to change her return ticket to Chicago. [REDACTED] states that through telephone conversations, the petitioner told her that she had to spend her own money for food, that her former husband made her paint his house. [REDACTED] further asserts that the petitioner's former husband did not do anything to help the petitioner begin studying or working.

The testimonial evidence is equivocal. In her statements submitted below, the petitioner states that she both was and was not battered by her former spouse. While physical abuse is not requisite to establish eligibility, the petitioner's assertion of battery, but failure to describe any particular incidents of such abuse detract from the credibility of her testimony. While the petitioner states that her husband threatened her when she refused to engage in oral sex, she describes only one incident in detail which occurred prior to the former couple's marriage. Qualifying abuse must take place during a self-petitioner's marriage to the abuser. 8 C.F.R. § 204.2(c)(1)(vi). Nonqualifying abuse may be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred. 8 C.F.R. § 204.2(c)(2)(iv). Yet in this case, the petitioner's testimony indicates that after her marriage, she continued to refuse her former husband's sexual demands and slept apart from him.

The testimony contains further unresolved inconsistencies in regards to the petitioner's claim of extreme cruelty. While the petitioner stated that she "was forbidden any contacts with the outside world" and ██████ asserts that the petitioner's former husband did not do anything to help the petitioner begin studying or working, the record shows that the petitioner took three ESL classes from January through February 2003, maintained contact with ██████ and ██████ and was able to leave the house frequently to go shopping. While we do not discount the petitioner's testimony regarding her former husband's threats, the evidence shows that the petitioner was able to leave her former husband's home and that he agreed to change her airline ticket so she could stay with friends in Chicago.

The relevant documentary evidence also does not establish the petitioner's claim. The medical record confirms that the petitioner sought treatment for "cough and earache" and was prescribed medication. The record is consistent with the petitioner's testimony that her husband took her to seek treatment for her illness and does not indicate that her condition was caused by her husband's abuse. The bank records show that the petitioner made several withdrawals from her account during her marriage, but the records contain insufficient information to demonstrate that the petitioner was fully responsible for all of the former couple's expenses or was otherwise forced to use her own funds due to her husband's abuse.

In sum, the relevant evidence fails to establish that the petitioner's former husband's behavior during their marriage included battery or other violence directed at the petitioner or that his nonviolent actions were part of an overall pattern of violence that would rise to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has consequently failed to demonstrate that she was battered or subjected to extreme cruelty by her former husband during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

Beyond the director's decision, the petitioner has also failed to establish a qualifying relationship with her former husband. A divorced self-petitioner may establish a qualifying relationship with her former spouse only if she demonstrates a connection between the legal termination of the marriage within the past two years and the battery or extreme cruelty of her former spouse. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Although the petitioner filed her Form I-360 within two years of the legal termination of her marriage, she has not demonstrated a connection between her divorce and her former husband's battery or extreme cruelty because, as discussed in the preceding section, the petitioner has not demonstrated the requisite battery or extreme cruelty. She consequently has failed to establish a qualifying relationship with her former spouse, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on her relationship with her former husband, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. 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 relationship to the abusive spouse. As the petitioner has failed to establish a qualifying relationship with her former spouse, she has also not demonstrated her corresponding eligibility for immediate relative classification based on such a relationship.

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

The petitioner has not established by a preponderance of the evidence that she had a qualifying relationship with her former husband, that she was eligible for immediate relative classification based on such a relationship, that she entered into their marriage in good faith, that she resided with her former husband and that he subjected her to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her 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.