



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B9

FILE:

EAC 07 054 50840

Office: VERMONT SERVICE CENTER

Date:

MAR 30 2009

IN RE:

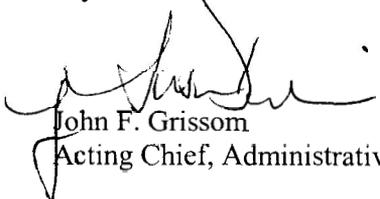
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 service center director 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 on the basis of his determination that the petitioner had failed to establish: (1) that her husband subjected her to battery or extreme cruelty; and (2) that she is a person of good moral character.

Counsel submitted a timely appeal on October 11, 2007.

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (ii) *Legal status of the marriage.* The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. . . .

* * *

- (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.*

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

Evidence for a spousal self-petition –

- (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is

credible and the weight to be given that evidence shall be within the sole discretion of the Service.

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

* * *

- (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.

Section 204(a)(1)(A)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a citizen of the United States is eligible to self-petition under these provisions if he or she is an alien:

- (CC) who was a bona fide spouse of a United States citizen within the past 2 years and –
 - (aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence
 - (bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or
 - (ccc) who 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. . . .

The petitioner is a citizen of Lithuania who entered the United States as a B-2 nonimmigrant visitor on June 28, 2000. She married D-B-,¹ a United States citizen, on January 14, 2004. The marriage was dissolved by the Circuit Court of Cook County, Illinois on November 9, 2005.

The petitioner filed a Form I-360 on June 14, 2005.² The director denied the Form I-360 on April 25, 2006, and the AAO dismissed a subsequent appeal on November 6, 2006. In its November 6, 2006 decision, the AAO found that the petitioner had failed to establish that she was subjected to battery and/or extreme cruelty by D-B-.

The petitioner filed the instant Form I-360 on December 14, 2006. The director issued a request for additional evidence on December 28, 2006, and requested evidence to establish that the petitioner was married to D-B-; that D-B- is a lawful permanent resident or citizen of the United States; that the petitioner shared a joint residence with D-B-; that the petitioner or her daughter suffered battery or extreme cruelty perpetrated by D-B-; that the petitioner is a person of good moral character; and that the petitioner married D-B- in good faith. The petitioner responded on March 22, 2007, and submitted additional evidence.

The director issued a notice of intent to deny (NOID) the petition on July 10, 2007, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish that she was subjected to battery and/or extreme cruelty by D-B-; and that she is a person of good moral character. The petitioner responded to the director's NOID on June 25, 2007, and submitted additional evidence. After considering the evidence of record, the director denied the petition on September 13, 2007. On appeal, counsel submits additional information.

¹ Name withheld to protect individual's identity.

² See EAC 05 184 52762.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition.

Battery or Extreme Cruelty

The first issue on appeal is whether the petitioner has established that D-B- subjected her to battery and/or extreme cruelty. The petitioner submitted the following evidence relevant to her claim of battery and/or extreme cruelty with the first Form I-360:

- The petitioner's handwritten statement;
- A letter from [REDACTED], the petitioner's daughter's boyfriend, dated February 13, 2006;
- A letter from [REDACTED]'s mother, dated February 10, 2006;
- A letter from [REDACTED] the petitioner's employer, dated February 6, 2006;
- A letter from [REDACTED] whose parents employ the petitioner, and who himself employs the petitioner's daughter, dated February 13, 2006;
- A letter from [REDACTED] the petitioner's neighbor, dated February 13, 2006; and
- Court records showing that D-B- was arrested and charged for, but not convicted of, simple assault, theft, and aggravated driving under the influence of alcohol.

In her undated statement, which was submitted to USCIS in 2005, in support of the her first Form I-360, the petitioner described ten incidents that occurred between February and December 2004 in which D-B- was drunk and called her names, insulted her, asked her for money, or threatened her. She stated that on March 20, 2004, D-B- threatened to divorce her and have her and her daughter deported. She stated that she was scared, unable to sleep, and depressed. She also stated that, on April 1, 2004, she saw a psychiatrist and began using two prescription medications.

In her February 10, 2006 letter, [REDACTED] stated that the petitioner's daughter complained frequently about the "constant arguing between her mother and her husband, his drinking problems and abusive behavior towards [the petitioner]." However, [REDACTED] provided no probative details about the abusive behavior, nor did she indicate that she ever personally witnessed any such abuse. [REDACTED], her son and the petitioner's daughter's boyfriend, stated that the petitioner's daughter stayed at the [REDACTED]' home on many occasions because she "couldn't listen to the constant arguments between her mother and her husband." Mr. [REDACTED] also stated that the petitioner's daughter often complained about "her stepfather's drinking and rage out-breaks, [and] abusive and irrespective [sic] behavior towards her mother." However, [REDACTED] did not discuss any particular incidents of abuse in any probative detail, nor did he indicate that he every witnessed any of the alleged abuse.

[REDACTED] stated that the petitioner confided in him about her marital problems, and stated that D-B-'s "drinking and ill will towards her were creating concerns for the futures [sic] of her marriage."

██████████ stated that the petitioner also confided in him about her marital difficulties, and expressed to him her fear of D-B- and her difficulty sleeping. ██████████ also stated his belief that the petitioner sought medical treatment for her stress and sleeping problems. ██████████ stated that she often heard the D-B- screaming at the petitioner, and that he appeared drunk every time she looked at him. ██████████ also stated that, on February 14, 2004, she heard D-B- screaming at the petitioner, with slurred speech, for about one hour before he left the apartment, and also heard the petitioner crying.

The AAO found this evidence insufficient in its November 6, 2006 decision. The AAO found that the testimonial evidence of record failed to establish that the petitioner had been subjected to battery or extreme cruelty as those terms are defined at 8 C.F.R. § 204.2(c)(2)(iv). The AAO also found that the court documents submitted by the petitioner did not establish battery or extreme cruelty to the petitioner, as (1) the court records did not indicate that the petitioner was the alleged victim of any of the underlying incidents; and (2) the court records indicate that all charges were either dropped or stricken with leave to reinstate. The AAO also noted that, although counsel claimed to have submitted medical records, such medical records were never submitted into the record.

The instant Form I-360 filing contains the following evidence relevant to the petitioner's claim of battery and/or extreme cruelty

- A letter from ██████████, dated July 24, 2007;
- A letter from ██████████ dated July 25, 2007;
- A second, undated letter from ██████████ which was submitted with counsel's October 11, 2007 appellate submission;
- A letter from ██████████, dated July 26, 2007;
- A second, undated letter from ██████████, which was submitted with counsel's October 11, 2007 appellate submission;
- Copies of the petitioner's medical records; and
- Counsel's statements on the Form I-290B.

In his letter, ██████████ states that he treated the petitioner for severe anxiety and stress on March 2, 2007. According to ██████████ the petitioner's severe anxiety and stress were the result of post-traumatic stress disorder (PTSD). ██████████ states that the petitioner was the victim of an abusive marriage that has, at times, limited her ability to function.

In her first letter, ██████████ stated that she had agreed to treat the petitioner, for PTSD, on a regular basis. In her second letter, ██████████ stated that she began treating the petitioner on July 25, 2007. According to ██████████ the overwhelming stress of the petitioner's circumstances resulted in anxiety and insomnia, and that such symptoms continue. ██████████

states that the petitioner's lack of knowledge with regard to the American medical system and her lack of English language skills prevented her from getting appropriate help at the time of the abuse.

In his July 26, 2007 letter, [REDACTED] stated that the petitioner was subjected to routine verbal degradation, which included profane assaults; name-calling; threats to her safety; and financial extortion. [REDACTED] asserted that D-B-'s behavior traumatized the petitioner to the point that she has developed PTSD. According to [REDACTED] "the collateral damage to [the petitioner] requires systematic desensitization and interventions of care that have been financially unaffordable," which is why "treatment to date has been inconsistent." [REDACTED] stated that, furthermore, because the petitioner "was subjected to a great deal of social isolation and intimidation she has been limited in accessing services for herself and her daughter." [REDACTED] stated that the petitioner was currently receiving his services due to a substantial donation.

In his second, undated, letter, which was submitted on appeal, [REDACTED] states that the petitioner's situation was brought to his attention over two years ago by a colleague who was concerned for her mental and physical well-being. He states that, since she was born and raised in a communist country, the petitioner had no experience in trusting the government to intervene in a domestic situation. He also states that, furthermore, as an immigrant to the United States, the petitioner had no idea how to access human services, and she did not view the police as a viable option for relief. According to [REDACTED], the therapist who is currently treating the petitioner is providing intensive psychotherapy, on a weekly basis, for the same condition that he noted nearly three years ago. [REDACTED] notes that the petitioner's symptoms are those of a classic PTSD, and that the condition has been further complicated by the petitioner's classic battles with insomnia, which she never experienced before marrying D-B-.

The petitioner's medical records indicate that she first visited the SCHN/Fantus Health Center (SCHN) on December 17, 2003, one month before she married D-B-. Her record is annotated to note that she was experiencing insomnia, fatigue, irritability, and sadness; and she was prescribed both Zoloft and Ativan.

She returned to SCHN for a follow-up visit on February 19, 2004. Her record from that date is annotated to note that the petitioner had initially gone to the emergency room in December 2003 due to anxiety, secondary to insomnia. She had also reported in December 2003 that she was stressed out by her daily issues and problems and could not sleep well. At her February 19, 2004 visit, the petitioner reported that she was sleeping well. She was again prescribed Zoloft and Ativan. She was scheduled for an "intake" on April 9, 2004.

On April 9, 2004, the petitioner was diagnosed with major depressive disorder. The report from that visit describes the petitioner's "presenting statement" as insomnia. The report indicates that, six months prior to this visit, the petitioner had been "having anxiety and more importantly insomnia." The report stated that, at that time, the petitioner "would feel very tired all day"; was unable to fall asleep; was getting less than four hours of sleep per night; had heart palpitations and depressed feelings; and that the petitioner would dwell upon the fact that she was unable to fall asleep. The report stated that, at the same time, the petitioner's daughter was staying out late, and

that the petitioner would stay up late until her daughter came home. In a section of the report entitled "Precipitating Events or Recent Stresses; Reason for Currently Seeking Treatment," the individual who prepared the report wrote the following: "Daughter living at home in college. Worries about daughter growing up." She was again prescribed medication.

The petitioner's September 8, 2004 medical report states that she was doing well; her sleeping and appetite were described as "good"; and the petitioner reported no panic or anxiety. She was again prescribed medication.

The petitioner's December 1, 2004 medical report states that the petitioner described her mood as "pretty good but a little anxious"; that the petitioner's insomnia had improved; that the petitioner's appetite was normal; and that the petitioner had "denied any depressed mood." She was again prescribed medication.

The petitioner's March 28, 2005 medical report states that the petitioner "is doing very well"; that "sleep & appetite are good"; and that she reported "no anxiety." She was again prescribed medication.

The petitioner's June 20, 2005 medical report states that the petitioner was doing well, but that she was "under a lot of stress" due to her divorce and problems with her "green card." She was again prescribed medication.

Upon review of the record, the AAO agrees with the director's finding that the petitioner had failed to establish that she was the victim of battery or extreme cruelty by D-B-. As a preliminary matter, the AAO incorporates here the analysis of its November 6, 2006 decision with regard to the evidence, including the petitioner's self-affidavit, that was submitted in support of the first Form I-360. Although the petitioner submits evidence that the petitioner sought medical attention with the instant Form I-360, that evidence still does not indicate that the petitioner was subjected to battery or extreme cruelty.

The medical documentation submitted by the petitioner indicates that the reason the petitioner sought medical attention between 2003 and 2005 was for "anxiety and more importantly[,] insomnia." The evidence indicates that she first sought medical attention for these conditions in December 2003, before she was married to D-B-. As noted by the director in his denial, the February 19, 2004 report states that the petitioner had gone "to the ER due to anxiety secondary to insomnia," and in December 2003, as she "was stressed by the daily issues/problems and couldn't sleep well." The April 9, 2004 report states that at the same time the petitioner began having anxiety and insomnia, her daughter was staying out late, and the petitioner would stay up until her daughter came home. The director also noted that "the first mention of your spouse came during the final session on June 20, 2005."

On the Form I-290B, counsel contends that the director "failed to consider the full medical report and the reasons for the initial treatment." According to counsel, the "reasons for the initial

treatment” were the stresses related to the petitioner’s abusive husband and the petitioner’s need for psychiatric help. Counsel states that the petitioner’s daughter had no choice but to stay out late, as she suffered from the same abuse from D-B- as the petitioner. Counsel also states that the director “erred in noting that the first time the Applicant mentioned her spouse was in June 2005.”

The AAO disagrees with counsel’s analysis. First, the AAO dismisses counsel’s assertion that the director “erred in noting that the first time the Applicant mentioned her spouse was in June 2005.” The director was correct: the June 20, 2005 medical report was the first one to make any mention of the petitioner’s husband. Moreover, the AAO notes that the petitioner’s visit to the ER for anxiety, secondary to insomnia occurred in December 2003, before she and D-B- were married. The record, therefore, indicates that the anxiety and insomnia for which the petitioner received treatment between December 2003 and June 2005 began before she married D-B-, and there is no indication that her subsequent marriage to D-B- worsened the symptoms which existed before the marriage. Even when the subject of the petitioner’s husband finally came up in June 2005, he was only mentioned with regard to the stress of a divorce, and problems with the petitioner’s “green card.” The AAO notes further that no mention was made, at any point, of any maltreatment by D-B-. There is no information, whatsoever, in any of these medical reports to support counsel’s assertion that the petitioner was the victim of battery or extreme cruelty by D-B-.

Nor do the letters from [REDACTED] or [REDACTED] establish that the petitioner was subjected to battery or extreme cruelty by D-B-. The AAO has found that the petitioner has failed to establish that the medical treatment she received between December 2003 and June 2005 was related to any maltreatment by D-B-. Although [REDACTED] began treating the petitioner for PTSD on July 25, 2007, the AAO notes that this treatment began only after the director issued his notice of intent to deny the petition on July 10, 2007. Thus, it appears that the petitioner may have sought such treatment in an attempt to bolster the credibility of her petition. Regardless of her intent in beginning this treatment, the petitioner has failed to offer a credible explanation as to why she waited nearly two years after her divorce from D-B- to begin such treatment. Although [REDACTED] states that the petitioner’s poor language skills and lack of understanding of the American medical system prevented her from getting help at the appropriate time, the AAO notes that such barriers did not prevent the petitioner from seeking, and obtaining, treatment for anxiety and insomnia before and during her marriage to D-B-.

Nor is [REDACTED] explanation for the petitioner’s delay in seeking treatment for her PTSD sufficient. [REDACTED] identifies financial, linguistic, and cultural barriers that prevented the petitioner from accessing the mental health treatment she needed. However, he does not reconcile this explanation with her ability to access such treatment, which lasted at least eighteen months, for her anxiety and insomnia. Further, [REDACTED]’s testimony is undermined by his assertion that insomnia and depression were not an issue prior to her marriage to D-B-, which is not true. The record contains clear evidence that the petitioner sought services for anxiety and insomnia on December 17, 2003, prior to her marriage to D-B-, and the April 9, 2004 medical report added that depressed feelings were also part of the reason for her December 2003 visit.

Moreover, the AAO notes that the statements of M [REDACTED] and [REDACTED] lack most of the information specifically requested by the director in his NOID, namely: (1) the number of individual sessions attended; (2) the number of group sessions attended; (3) the duration of each session; (4) the dates of each session; (5) the topics discussed; and (6) the purpose(s) of any medications prescribed. Counsel has not explained the failure to submit this information. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The record fails to establish that the petitioner's previous medical treatment, which began prior to her marriage to D-B-, and ended in June 2005, was related to any battery or extreme cruelty by D-B-. Although the petitioner resumed mental health treatment in July 2007, after the issuance of the director's NOID, the record lacks both: (1) a credible explanation for her delay in seeking treatment; and (2) the detailed information regarding such treatment specifically requested by the director in his NOID.

For all of these reasons, the AAO agrees with the director's conclusion that the record does not establish that the petitioner was subjected to battery and/or extreme cruelty by D-B-. The petitioner has failed to establish that the actions of D-B- 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 evidence fails to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that D-B-'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. The petitioner has failed to establish that D-B- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The director also found that the petitioner had failed to establish that she is a person of good moral character. On appeal, counsel submits additional evidence which overcomes the decision of the director.

In his denial, the director noted that the police clearance submitted by the petitioner did not contain all of the names that the petitioner has used in the past. On appeal, she submits an updated police clearance, which contains all names used by the petitioner. The petitioner, therefore, has established that she is a person of good moral character.

Accordingly, the AAO will withdraw that portion of the director's decision pertaining to the petitioner's failure to establish that she is a person of good moral character.

Qualifying Relationship and Eligibility for Classification as an Immediate Relative

Beyond the decision of the director, the AAO finds that the petition may not be approved for another reason. The record establishes that the petitioner was divorced from D-B- at the time the Form I-360 was filed. As set forth previously, the petitioner has failed to demonstrate that she suffered battery and/or extreme cruelty by D-B-. Therefore, she has also failed to demonstrate a connection between the termination of the marriage and any battery or extreme cruelty to which she was subjected by D-B -. If the petitioner was divorced from D-B - at the time the petition was filed, the record then fails to establish that she had a qualifying relationship with a United States citizen on the date the petition was filed, as it fails to demonstrate a connection between the termination of the marriage and any battery or extreme cruelty he was subjected to by D-B -. The petitioner has failed to establish a qualifying relationship, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. She is, therefore, ineligible for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act. For this additional reason, the petition may not be approved.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that D-B- subjected her to battery or extreme cruelty. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii). The AAO disagrees with the director's determination that the petitioner has failed to establish that she is a person of good moral character, and withdraws that portion of the director's decision stating otherwise. Beyond the decision of the director, the AAO finds that the petitioner has failed to establish that she had a qualifying relationship with a citizen of the United States on the date the petition was filed; or that she is eligible for immigrant classification as an immediate relative. For all of these reasons, the AAO will not disturb the director's denial of the petition.

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

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

ORDER: The appeal is dismissed.