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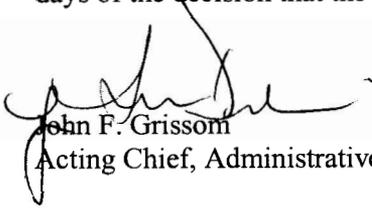
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 she has a qualifying relationship with a United States citizen or lawful permanent resident; (2) that she is eligible for immigrant classification as an immediate relative; (3) that she shared a joint residence with her husband; (4) that her husband subjected her to battery or extreme cruelty; and (5) that she married her husband in good faith.

The petitioner submitted a timely appeal on September 17, 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. . . .

- (v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.
- (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.
- (vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

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

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are 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. . . .
- (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.
- (iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a

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

- (v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. 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.

* * *

- (vi) *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 petitioner is a citizen of Tanzania who entered the United States in B-2 visitor status on October 15, 2001. She married G-T,¹ a citizen of the United States, on September 24, 2002, in Bryan, Texas. G-T- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on May 30, 2003. The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on that same date. The Forms I-130 and I-485 were denied on October 28, 2004, on the basis of the petitioner's failure to appear for a scheduled interview.

The petitioner filed the instant Form I-360 on March 7, 2005. The director issued a request for additional evidence on November 6, 2006, and requested additional evidence to establish that the

¹ Name withheld to protect individual's identity.

petitioner has a qualifying relationship; that the petitioner and G-T- shared a joint residence; that the petitioner had been subjected to battery and/or extreme cruelty by G-T-; and that the petitioner married G-T- in good faith. The petitioner responded to the director's request on January 3, 2007, and requested additional time in which to submit a response. On March 1, 2007, the director issued a notice of intent to deny (NOID) the petition, which notified the petitioner of deficiencies in the record and afforded her additional time in which to establish that she has a qualifying relationship with a United States citizen or lawful permanent resident; that she is eligible for immigrant classification as an immediate relative; that she shared a joint residence with her husband; that her husband subjected her to battery or extreme cruelty; and that she married her husband in good faith. The petitioner responded on May 1, 2007.

After considering the evidence of record, the director denied the petition on August 13, 2007.

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

Qualifying Relationship and Eligibility for Classification as an Immediate Relative

The director requested, in both his November 6, 2006 request for additional evidence and March 1, 2007 NOID, a sworn affidavit from the petitioner in which she stated (1) whether she was still married to G-T-; and (2) how many times, to the knowledge of the petitioner, that G-T- had been married prior to his marriage to the petitioner. Such information was required due to the petitioner's failure to complete the Form I-360. However, the petitioner elected not to comply with the director's requests, which left the director no choice but to find that the petitioner had failed to establish that she has a qualifying relationship with a citizen of the United States and, accordingly, that she is eligible for preference immigrant classification as the spouse of a citizen of the United States.

The petitioner submits the requested information on appeal. In her September 11, 2007 affidavit, the petitioner states that she is still married to G-T-, and that she does not know how many times he was married prior to his marriage to her.

Although the petitioner has now responded to the director's inquiry, the AAO notes that she offers no explanation for her failure to supply the information when initially requested to do so. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to

be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Accordingly, the petitioner has not established that she still has a qualifying relationship with G-T-, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, or that she is eligible for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act.

Joint Residence

The second issue on appeal is whether the petitioner has established that she shared a joint residence with G-T-. Upon review, the AAO agrees with the director's determination that the petitioner has not established that she and G-T- shared a joint residence.

The record is unclear as to when the petitioner and G-T- began living together. Although the petitioner testified in her February 23, 2005 affidavit that she met G-T- in February 2002, she testified on the Form G-325A, Biographic Information, which she submitted to USCIS on May 30, 2003, that she had been living at [REDACTED] in Houston, Texas since October 2001. G-T- stated on his Form G-325A that he had also been living at [REDACTED] in Houston, Texas since October 2001. If the couple had been sharing a residence since October 2001, it is unclear how their first meeting could have occurred in February 2002. 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. *Id.* This inconsistency undermines the credibility of the petitioner's testimony.

On appeal, the petitioner states that "I had submitted to the USCIS all addresses and dates of the places I had resided with [G-T-]. Leases were submitted as evidence." However, the last lease submitted by the petitioner ended on June 30, 2005. The record does not support a finding that G-T- and the petitioner were still living together on that date. Rather, as noted above, the record indicates that they ceased living together in the fall of 2004. Nor do the leases indicate when the petitioner and G-T- started living together. The first lease indicates that the petitioner and G-T- began living [REDACTED] in Houston, Texas, with friends, on February 26, 2003. However, the Forms I-130, G-325A, and I-485 all indicate that, as of May 30, 2003, the petitioner and G-T- were living together at [REDACTED] in Houston. Again, this inconsistency undermines the credibility of the petitioner's testimony. See *Matter of Ho* at 591-92.

The petitioner testified in her February 23, 2005 affidavit that G-T- left the couple's marital residence a few weeks before she received the denial letter regarding her permanent residency application. As the Forms I-130 and I-485 were denied on October 28, 2004, the claimed period of joint residence, therefore, ended a few weeks before October 28, 2004. This is further supported by the petitioner's

September 14, 2004 note to the Houston USCIS District Office in which she stated that she would be unable to attend her September 15, 2004 permanent residency interview because she “got this letter late,” and had “a problem with my attorney so I need to change to another attorney.” According to the petitioner, she wrote this note because G-T- told her that he would not accompany her to the interview unless he gave her \$2500. Accordingly, it appears as though the petitioner’s testimony is that the period of claimed joint residency ended in the fall of 2004.

As the child support payment coupons are from 2005, they were not issued during the period of claimed joint residence, and so they are not evidence of a shared joint residence during that period of time. The same is true of the Reliant Energy and SBC utility bills: since they were issued outside the period of claimed joint residence, they cannot serve as evidence of a shared joint residence *during* the period of claimed joint residence. Nor does the life insurance policy establish that the petitioner and G-T- lived together during the claimed period of joint residence, as it was issued in September 2004. Nor do the bank statements from the First Community Credit Union establish that the petitioner and G-T- lived together during the claimed period of joint residence, as G-T-’s name was not added to the account until after that period of claimed joint residence had ended.

The only evidence of record to support the petitioner’s contention that she was living with G-T- during the claimed period of joint residence is the apartment lease and two handwritten receipts (one for furniture, and one for hand lotion). The AAO agrees with the director’s determination that the petitioner has failed to establish that she shared a joint residence with G-T-. A copy of a lease and two handwritten receipts are insufficient to demonstrate that the petitioner and G-T- lived together for a two-year period. Furthermore, that the petitioner appears to have added G-T-’s name to several accounts and purchased a life insurance policy at the time of her scheduled permanent residency interview indicates that such moves were made in an attempt to generate evidence of a joint shared residence with G-T-. The petitioner has failed to establish that she shared a joint residence with G-T-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The third issue on appeal is whether the petitioner has established that G-T- subjected her to battery or extreme cruelty. Upon review, the AAO agrees with the director’s determination that the petitioner has failed to make such a demonstration. As a preliminary matter, the AAO incorporates here its previous discussion of the inconsistencies and discrepancies in the petitioner’s testimony, which undermine the credibility of that testimony.

The petitioner married G-T- on September 24, 2002. In her February 23, 2005 affidavit, the petitioner stated that problems in the relationship emerged “a couple of months” after they moved into their own apartment in September 2003. She went to a nightclub with a friend, and they saw G-T- with another woman. She also learned that he had four children, whom she had not previously known existed. A few weeks later, G-T- came home intoxicated. The petitioner asked G-T- if he still loved her, which caused G-T- to become angry and throw her out of the house. She slept outside the apartment that night. Later, she learned that G-T- was having extramarital affairs. At the time of her permanent

residency interview, the petitioner stated that G-T- informed her that he would not attend the interview with her unless she paid him the sum of \$2,500.

The director found the petitioner's testimony insufficient to establish that she had been subjected to battery or extreme cruelty, and requested additional evidence in his request for additional evidence and NOID. In her December 20, 2006 affidavit, the petitioner stated that G-T- called her names; belittled her culture; made fun of her accent; and ridiculed her appearance. The petitioner stated that G-T- treated her like a prisoner; denied her access to the telephone; isolated her from her friends; accused her of talking to other men; and threatened to kill her. According to the petitioner, the only freedom she had was a few hours at church each week. However, G-T- eventually stopped her from going to church, as he thought she was seeing other men there. She testified that, eventually, she stopped taking care of her appearance, and even stopped taking care of her hair. Eventually, she began questioning her faith. The petitioner also described an incident in which her husband shook her, and pushed her, which caused her to fall into an ironing board. The ironing board had a hot iron on it, and the petitioner was burned.

The petitioner also submitted a December 20, 2006 letter from [REDACTED], who stated that she had been meeting with the petitioner for individual therapy since August 2006. According to [REDACTED] the petitioner testified to her that G-T- had been psychologically and physically abusive, as well as controlling. [REDACTED] stated that the petitioner had recently regressed in coping with her depression and stress.

The director noted in his August 13, 2007 denial that the petitioner had made no mention of physical abuse in her first affidavit.

In her September 11, 2007 affidavit, the petitioner stated that she did not mention the incident in which she was pushed and burned because it was a one time incident. In his letter in support of the appeal, counsel states that the petitioner did not mention this incident in her first affidavit "as a result of the traumatic experience she endured."

Upon review of the entire record of proceeding, the AAO agrees with the director's analysis. First, the AAO shares the director's concern with regard to the gradual escalation in the severity of the abuse described by the petitioner over the course of the petition. When she filed the petition, the petitioner's claim of abuse was focused on infidelity, dishonesty, and the refusal of G-T- to attend the permanent residency interview. However, by the time the petitioner responded to the director's NOID, her claim of abuse had expanded to repeated verbal and psychological abuse, controlling behavior, and physical abuse. The AAO rejects counsel's explanation that this escalation was caused by the petitioner's traumatic experience. Rather, the AAO agrees with the director's conclusion that this escalation amounts to inconsistent testimony on the part of the petitioner, which undermines the credibility of her testimony. *See Matter of Ho* at 591-92.

Furthermore, the AAO notes that the petitioner incorrectly referred to G-T- as '██████' and '██████' in her December 20, 2006 affidavit.² Although G-T- was born in Bryan, Texas, his name is neither ██████ nor ██████. The AAO finds it unusual that a married woman would refer to her husband by the wrong name, which leads the AAO to question whether the petitioner actually wrote her affidavits, or whether someone else wrote them for her, which diminishes their evidentiary weight further.³

Nor does ██████ letter demonstrate that the petitioner was subjected to battery or extreme cruelty during the marriage. First, the AAO notes that the petitioner did not begin seeing ██████ until August 2006, two years after the purported joint residence with G-T- ended. Nor does ██████ indicate how frequently she has met with the petitioner in order to treat the stress and depression she discusses. Moreover, ██████'s statements with regard to the abuse allegedly suffered by the petitioner are based upon the testimony of the petitioner, which has been found lacking in credibility. While the AAO does not question the qualifications of ██████, it does question the testimony of the petitioner upon which ██████ conclusions are based.

For all of these reasons, the petitioner has failed to establish that the behavior of G-T- rose 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. Nor has she established that she was the victim of any act or threatened act of physical violence or extreme cruelty, that G-T-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. As noted by the court in *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." The petitioner has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. She has failed to establish that her husband 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 Faith Entry into Marriage

The fourth issue on appeal is whether the petitioner has established that she married G-T- in good faith. As a preliminary matter, the AAO incorporates here its previous discussion with regard to the petitioner's failure to establish that she and G-T- shared a joint residence, and notes again the numerous inconsistencies and discrepancies in the petitioner's testimony with regard to the couple's joint residence. Again, 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

At the fifth page of her affidavit, the petitioner discussed "my troubled marriage with ██████' and an instance when ██████ was in the lounge."

The AAO also notes that counsel incorrectly refers to the petitioner as '██████' in his February 28, 2005 letter. The petitioner's name is not ██████

truth lies. *Matter of Ho* at 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. *Id.*

Although the petitioner asserted in her February 23, 2005 affidavit that she met G-T- on a Sunday morning at a gas station in February 2002, as noted previously, the Forms G-325A indicated that G-T- and the petitioner began living together in October 2001, which undermines completely the petitioner's description of the couple's courtship. In the absence of a reliable description of the couple's courtship, and the petitioner's failure to demonstrate that she shared a joint residence with G-T-, the AAO is unable to examine the petitioner's intentions upon entering into the marriage. Further, the petitioner's references to her husband by an incorrect name further undermines her assertion that she married him in good faith. The evidence of record fails to demonstrate that the petitioner entered into marriage with G-T- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

Beyond the decision of the director, the AAO finds that the petition may not be approved for an additional reason, as the record fails to establish that the petitioner is a person of good moral character.

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in March 2002 and ending in March 2005).

The record of proceeding does not include local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. Accordingly, the petitioner has failed to satisfy 8 C.F.R. § 204.2(c)(2)(v).

As the petitioner has failed to submit the requisite local police clearances or state-issued criminal background checks, she has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. 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 she has a qualifying relationship; that she is eligible for immigrant classification as an immediate relative on the basis of such a relationship; that she shared a joint residence with her husband; that her husband subjected her to battery or extreme cruelty; and that she entered into marriage with her husband in good faith. Beyond the decision of the director, the AAO also finds that the petitioner

has failed to establish that she is a person of good moral character. She is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

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.