

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9.

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 05 2010**
EAC 08 194 50025

IN RE: [REDACTED]

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

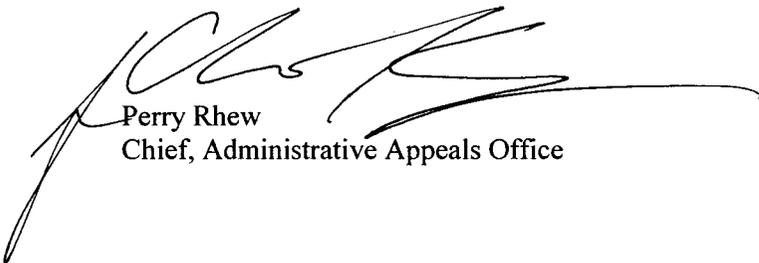
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

at least one and a half
million and a quarter
yearling horses in the
country.

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 sustained.

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

The director denied the petition on the basis of his determination that the petitioner had failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. The petitioner, through counsel, filed a timely appeal on January 15, 2010. On appeal, counsel submits a memorandum of law and additional testimonial evidence.

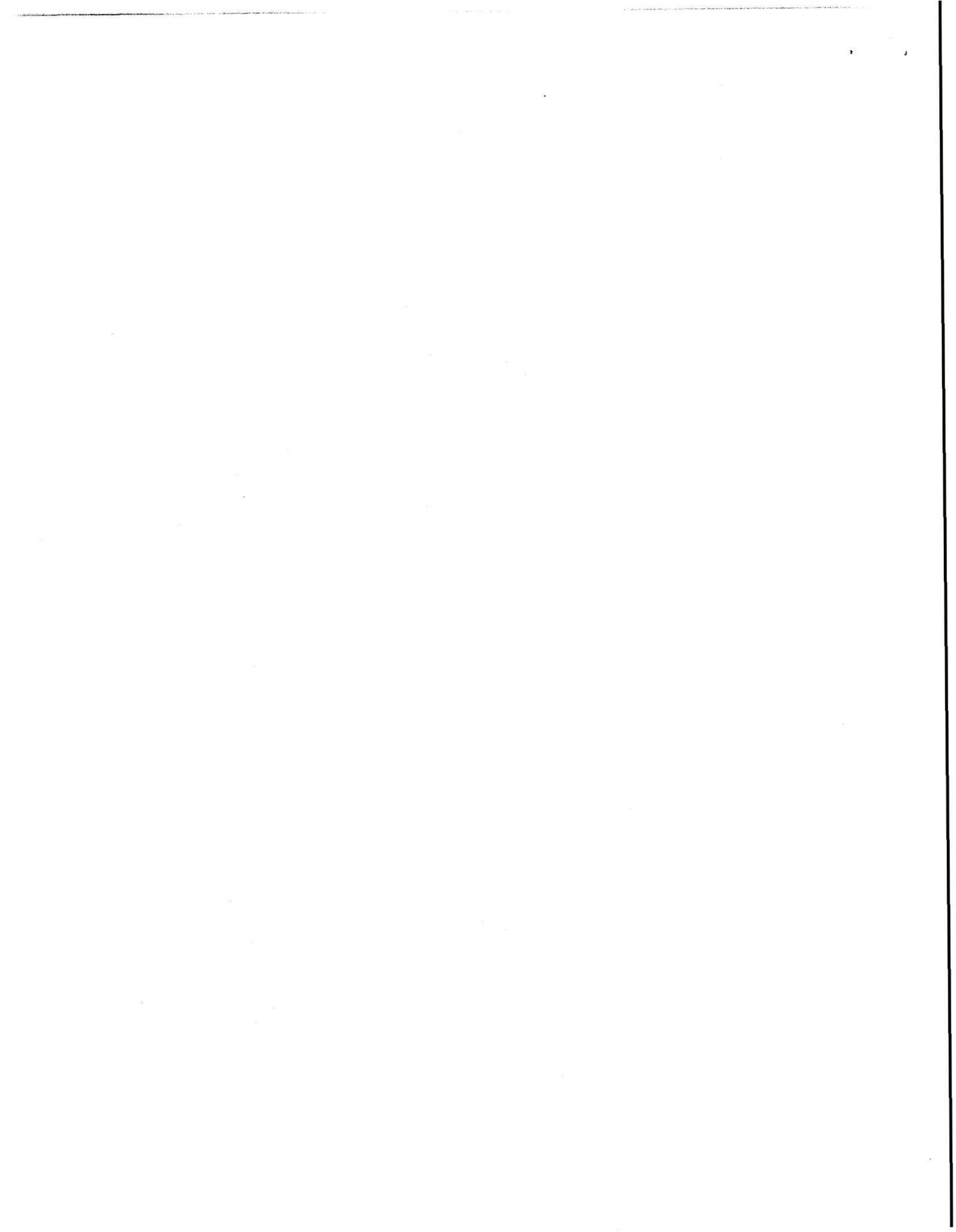
Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident spouse in good faith and that 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B) 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:

- (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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are 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.

* * *

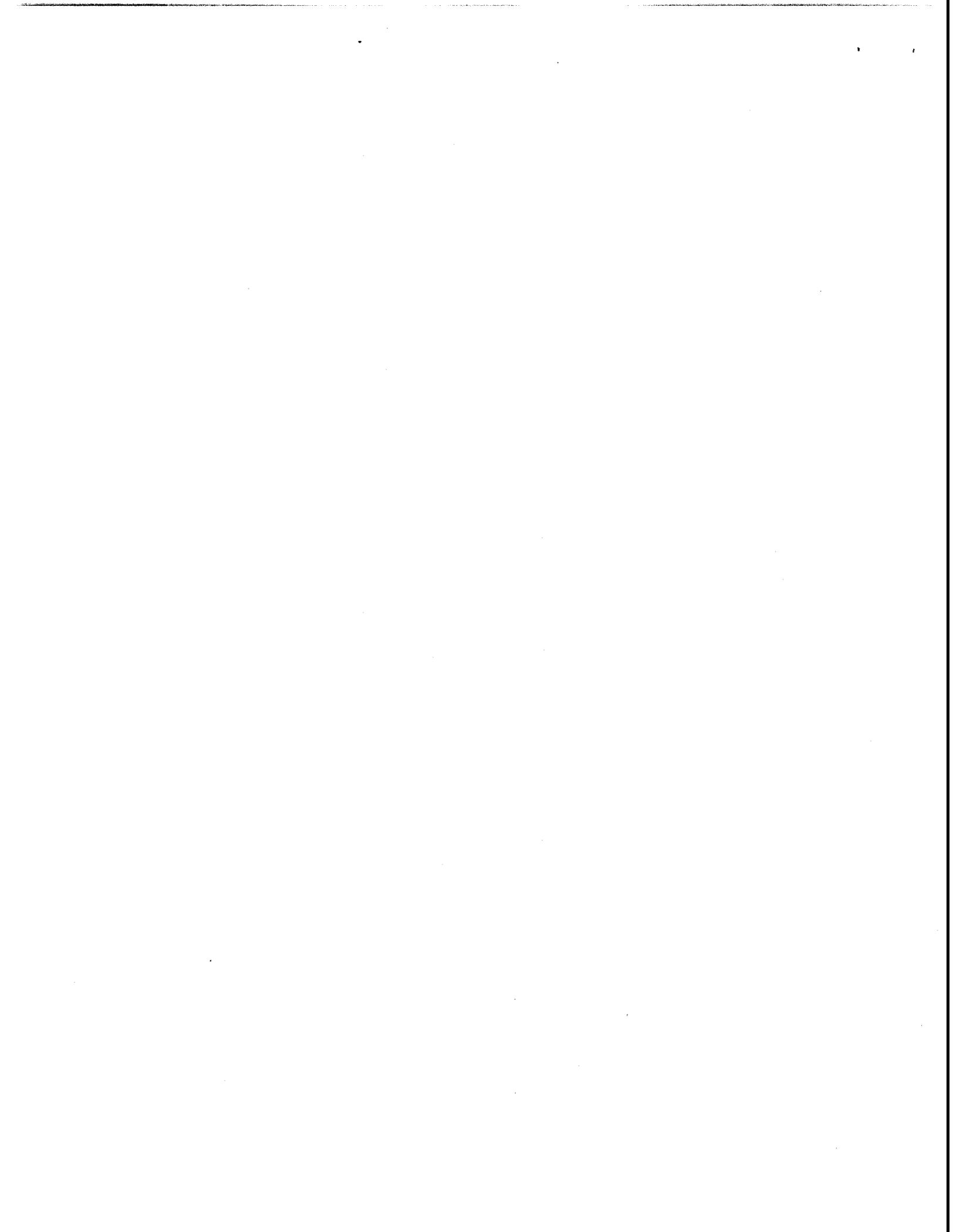
- (iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against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

The petitioner is a citizen of Mexico who entered the United States without inspection on or around March 22, 1986. She married C-R-,¹ a lawful permanent resident of the United States, on July 5, 1989.²

The petitioner filed the instant Form I-360 on June 30, 2008. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed a timely response. The petitioner's response to the director's RFE consisted of a request for additional time during which to

¹ Name withheld to protect individual's identity.

² On June 24, 1991, C-R- and the petitioner declared before the County Clerk of Dallas County, Texas, that they had entered into an informal marriage on or around August 3, 1986. Their formal marriage took place on July 5, 1989.



respond to the RFE, which the director denied. After considering the evidence of record, the director denied the petition on December 16, 2009.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO withdraws the director's December 16, 2009 decision and sustains the petitioner's appeal.

Battery or Extreme Cruelty

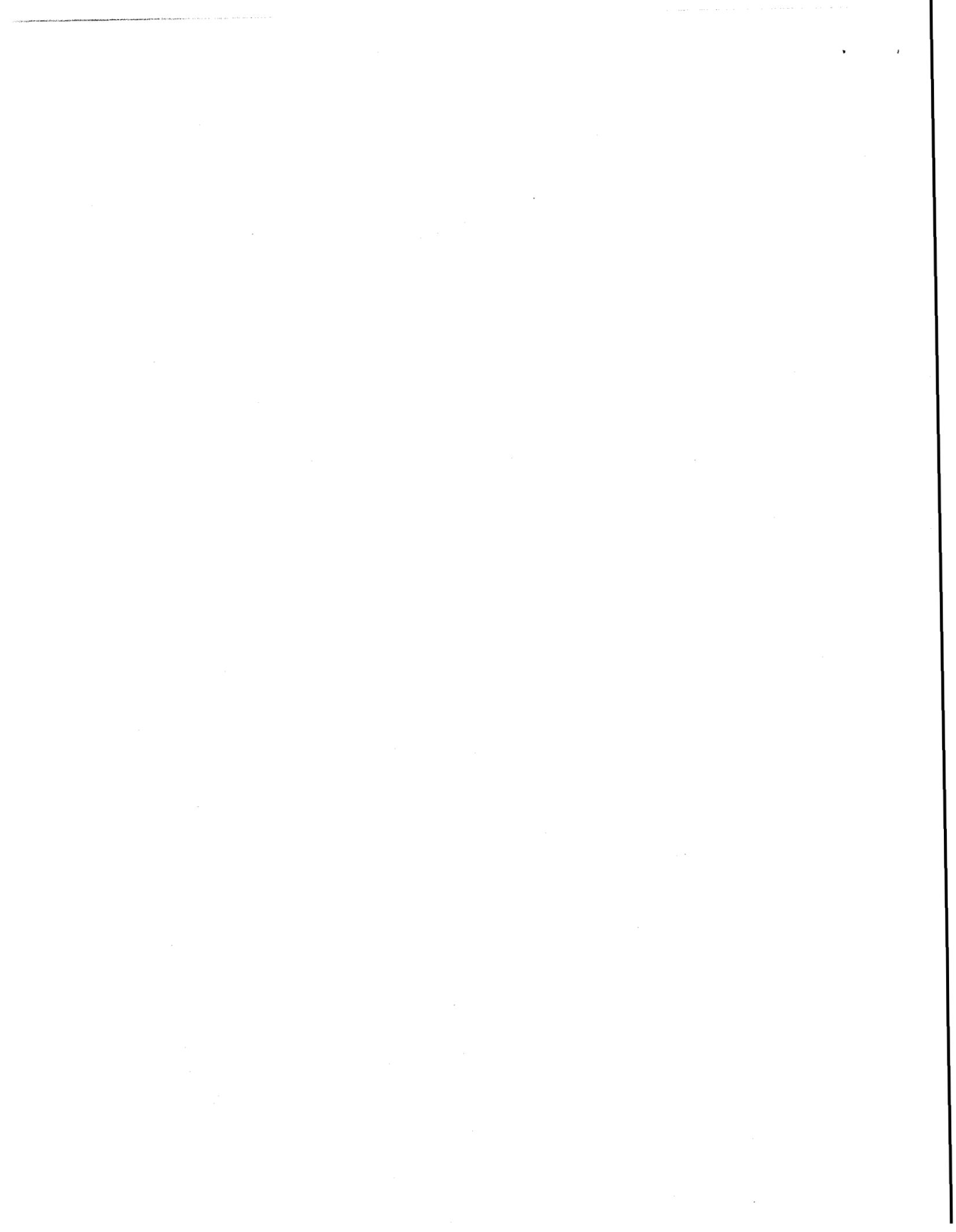
The sole issue on appeal is whether the petitioner has established that C-R- subjected her to battery and/or extreme cruelty during their marriage. As evidence that C-R- subjected her to battery and/or extreme cruelty, the petitioner submits the following testimonial evidence:

- The petitioner's January 17, 2008 statement;
- The petitioner's January 4, 2010 statement;
- An undated statement from ██████████
- A February 7, 2008 statement from ██████████
- A January 12, 2010 statement from ██████████ and
- A January 4, 2010 statement from the petitioner's son.

The initial statements from the petitioner and ██████████ as well as ██████████ statement, were before the director at the time he issued his decision. In that decision the director cited to the language of his August 11, 2009 RFE, which had stated that the testimonial evidence of record lacked detailed descriptions of specific instances of physical abuse. The director also highlighted several apparent inconsistencies and discrepancies in the petitioner's testimony.

In her first statement, the petitioner stated that although things initially went well after she and C-R- began living together in November 1986, C-R- began drinking heavily and calling the petitioner names; pushed her; and became very jealous. Although she had a miscarriage in 1987, C-R- was unsympathetic, and blamed the petitioner for losing the baby. Although the petitioner's doctor told her to wait a year before becoming pregnant again, C-R- believed she was making excuses in order to avoid becoming pregnant again. The petitioner became pregnant again in late 1987, and things went well for a short time. However, C-R- soon began coming home intoxicated and would scream, slam doors, and insult the petitioner. If he did not like the food she had fixed, he threw it at her. The petitioner stated that she remained quiet, because she knew she would miscarry again if C-R- hit her. The petitioner stated that C-R-'s worst treatment of her occurred on December 25, 1987. She stated that because she did not know how to cook the traditional Guatemalan food he liked, C-R- pinched her; pushed her; and called her many offensive names.

The petitioner stated that on one occasion in 1988, she discovered that C-R- had filed immigration documents for his sister. The petitioner stated that this angered her greatly, as he had not yet filed



for her. They argued over the matter and, according to the petitioner, C-R- "was like crazy." The petitioner stated that C-R- pushed her, threw things around the room, and called her horrible names.

The petitioner stated that on one night in January 1989, when their son was still a baby, C-R- came home from work intoxicated, as was usual. As the petitioner was putting the baby to sleep, C-R- wanted to take the baby, and the petitioner resisted. C-R- pushed the petitioner aside, yelled at her, called her names, and told her that the child was his son and that he was going to take him. The petitioner stated that she called for C-R-'s nephew, who was living with them at that time. C-R- and his nephew began arguing. The petitioner stated that there were other men in the apartment, and that most of them were intoxicated. One of them had a gun, and threatened C-R-. The petitioner stated that the gun discharged accidentally, and killed C-R-'s nephew.

The petitioner stated that C-R- stopped drinking after that incident for three months, and they had their happiest times together. However, he soon resumed drinking and calling the petitioner names, throwing things, yelling at the petitioner, and acting jealous.

The petitioner stated that she left the petitioner in 1990. While they were separated, C-R- had an accident, and his brother called the petitioner to the hospital. The petitioner stated that she felt sorry for C-R-, and decided to take care of him. C-R- promised the petitioner that he would stop drinking and treat her better, so they decided to rent another apartment together. Following a one-month trip to Guatemala in late 1990, C-R- began drinking again. The petitioner stated that she became depressed at that point.

The petitioner stated that on one occasion in May 1992, she came home from work later than normal. C-R- became jealous, and accused her of cheating. They began arguing, and C-R- hit her arm and broke the couple's glass dining room table. C-R- apologized the next day, and the petitioner realized at that point that things would never change. In December 1992, while C-R- was planning another trip to Guatemala, the petitioner told him that he was not going to make her suffer any longer, and that when he returned from his trip, he would find his things packed into a bag for him. C-R- returned from his trip in January 1993, and the petitioner told him to leave. The petitioner stated that he called the apartment from time to time to call her names, but she simply hung up the telephone. He never helped the petitioner with their son, which was difficult at times, since he suffers from epilepsy.

In her second statement the petitioner repeated the assertions of her first statement and added additional details. The petitioner stated that before she suffered a miscarriage in 1987, she and C-R- had been moving from one apartment to another. The petitioner stated that she was under a great deal of stress, and had to load and carry very heavy boxes. Although he knew she was pregnant, C-R- never offered to help. As noted previously, she miscarried, and C-R- was unsympathetic: although she was very sad about the miscarriage, C-R- accused her of miscarrying on purpose because she did not want children with him.



On one occasion in late 1987, during the petitioner's subsequent pregnancy, C-R- came home intoxicated and screamed at the petitioner, insulted her, slammed doors, and broke a stereo and lamp. On another occasion, he threw food that the petitioner had cooked for him at her when he did not like it. The petitioner stated that because she did not want to miscarry again, she remained quiet. On another occasion during that pregnancy, C-R-'s sister came to visit. When C-R- came home and saw his sister cooking while the petitioner was sitting, he became "enraged." The petitioner stated that C-R- called her names in front of several people. The petitioner also reported that after the couple's son was born, C-R- began threatening to take him away since she was not in the United States legally.

In her statement, ██████████ stated that C-R- abused the petitioner mentally and physically.

In her first statement, ██████████ stated that she lived with C-R- and the petitioner in 1990, and that she was a frequent witness to acts of physical abuse of the petitioner by C-R-. She also stated that C-R- was not bothered by the fact that others were present when he hit the petitioner.

In her second statement, ██████████ stated that C-R- came home from work late almost every night. She stated that he called the petitioner names; was very easily angered; and insulted the petitioner in front of their son. He also insulted ██████████ calling her names. ██████████ stated that the couple's son became frightened when C-R- was abusive and cried, but that C-R- did not care. She also related an October 1990 incident during which C-R- threw things around the living room and broke a glass dining table. She stated that C-R- hit the petitioner so hard she fell to the floor.

In his statement, the petitioner's son reports that C-R- mentally and physically abused his mother. He recounts that when he was a child he witnessed C-R- call the petitioner names; accuse her of infidelity; and push her. The petitioner's son also described how C-R- repeated the cycle of abuse with subsequent girlfriends.

The testimonial evidence of record establishes that C-R- subjected the petitioner to both battery and extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).. The petitioner has credibly recounted in probative detail numerous instances of abuse inflicted upon her by C-R- both prior to and during their marriage, and her affiants have done the same. The relevant evidence demonstrates that the petitioner was subjected to a cycle of violence including both physical and psychological abuse inflicted by C-R- across a period of over six years, including over three years during their marriage.

Having made that determination, the AAO turns to the discrepancies and inconsistencies highlighted by the director in the RFE. With regard to the two dates provided by the petitioner regarding her date of marriage, the AAO notes that on June 24, 1991, C-R- and the petitioner declared before the County Clerk of Dallas County, Texas, that they had entered into an informal marriage on or around ██████████. Their formal marriage took place in Dallas County, Texas on ██████████. The record contains credible documentary evidence of both events. With regard to the lack of documentation regarding the accidental shooting of C-R-'s nephew, the petitioner

stated that she went with C-R- to testify about the incident, and that it had been an accident. She stated that she thinks the man who accidentally shot the gun was sentenced to jail, but that she does not remember. She does remember that the nephew's body was returned to Guatemala. The AAO finds this explanation sufficient, especially in light of the fact that the petitioner's allegations of battery and extreme cruelty are not dependent upon this event. The petitioner's testimony adequately resolves the prior inconsistencies and discrepancies noted by the director.

Upon review of the entire record, the AAO finds that the petitioner has established that C-R- subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Conclusion

As set forth above, the petitioner has established that C-R- subjected her to battery or extreme cruelty, and the AAO concurs with the director's determination that the petitioner meets all other statutory requirements. Accordingly, the petitioner has established that she is eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), and the petition will be approved.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal is sustained.

ORDER: The decision of the director is withdrawn. The appeal is sustained, and the petition is approved.

