

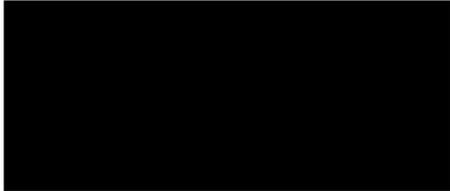
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office, MS 2090  
Washington, DC 20529-2090



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



B9.

FILE:



Office: VERMONT SERVICE CENTER

Date:

**AUG 06 2010**

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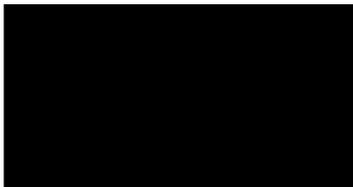
Petitioner:



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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhee

Chief, Administrative Appeals Office

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**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("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.

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).

On March 27, 2009, the director denied the petition, determining that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by her United States citizen spouse.

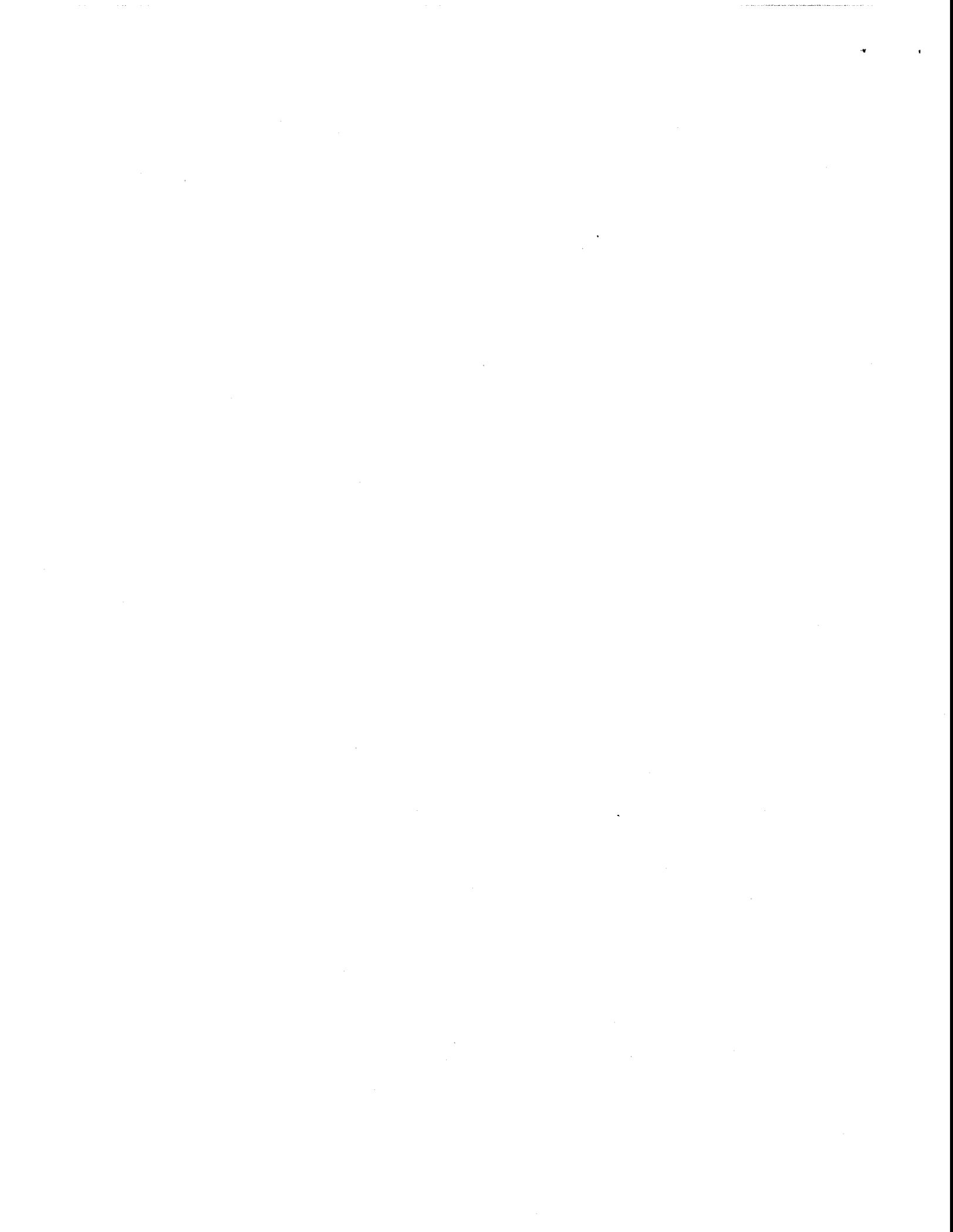
Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief, and previously provided documentation.

Section 204(a)(1)(J) of the Act 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 also explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen



. . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

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

\* \* \*

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

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Philippines. She initially entered the United States on January 26, 1996 as a B-1 visitor. On October 29, 1999, the petitioner married M-S-<sup>1</sup>, the claimed abusive United States citizen spouse. On August 30, 2000, M-S- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On July 31, 2001, M-S- withdrew the Form I-130 and on September 24, 2003 the action on the Form I-130 was terminated. On February 22, 2007, a Decree of Divorce was issued terminating the marriage. On October 24, 2007, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated on the Form I-360 that she had resided with M-S- from February 2000 to August 2001.

*Abuse*

In support of the petition, the petitioner submitted her personal statement, dated October 15, 2007. The petitioner declared: that things began falling apart in February 2000, only a month after they

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



moved in together; that M-S- left her a note toward the end of February saying that things were not working out and he wanted to end the relationship; that in May 2000, almost three months after his disappearance, M-S- called her and told her that he suffered from chronic depression and that he still wanted to work on the marriage; that on May 15, 2001 they were supposed to attend their immigration interview; and that M-S- left home that morning saying he would return to pick the petitioner up for the interview, but he did not show up. The petitioner indicated that two or three days later, M-S- called and told her that he did not want to remain married. The petitioner indicated that M-S- disappeared again and she had little contact with him until she was hospitalized with an illness in October 2001. The petitioner noted that M-S- visited her and explained that in addition to his depression he had a history of mental illness and consented to her obtaining his medical records. The petitioner stated that by January 2002 she was suffering from anxiety and depression and that she was referred to [REDACTED] for a psychological evaluation. She was diagnosed with anxiety and depression and prescribed Xanax and Celexa and that she still is on medication for her depression. The petitioner stated that for the next several years, M-S- would show up at her home and ask for money and that he would promise that they would work on their relationship.

The record also included the petitioner's spouse's medical records showing that he had been diagnosed with suicidal depression in July 1984 and had a final diagnosis in December 1984 of Dysthymic Disorder and Personality Disorder, Passive Aggressive Type as the principal diagnosis. The record also included letters from M-S- to the petitioner, some including dates in May to November 2000, discussing M-S-'s desire and inability to maintain the relationship. The record further included the petitioner's medical records including a doctor's notes taken on January 8, 2002 noting that the petitioner indicated her anxiety and panic was caused by her husband and that she had suffered emotional abuse by her husband, and that she had been prescribed anti-anxiety medication.

In response to the director's request for further evidence, the petitioner submitted a second personal statement dated March 3, 2009. The petitioner declared: that she had been subjected to extreme verbal and mental abuse throughout her eight-year marriage to M-S-; that M-S- would leave their house without a word and return days or weeks later; and that M-S- wrote letters threatening to divorce her and saying that the marriage could not work but then would return and beg to be taken back. The petitioner indicated that each time M-S- returned and left she would be heartbroken and devastated and that as she continued to suffer through his disappearances, verbal threats, and strange behaviors, she began suffering from depression as well. The petitioner noted that she felt ashamed and stopped attending her church and that M-S- did not want her to have friends or family around. The petitioner further indicated that each time M-S- left her, she felt abandoned and isolated and that M-S- only returned when he needed something like money or a place to stay.

Upon review of the record, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by her spouse.

On appeal, counsel for the petitioner asserts that the petitioner demonstrated that she was verbally, mentally and emotionally abused by M-S- as set out in her detailed affidavits, her medical records, M-S-'s medical records, and letters M-S- had written to her. Counsel contends that the director



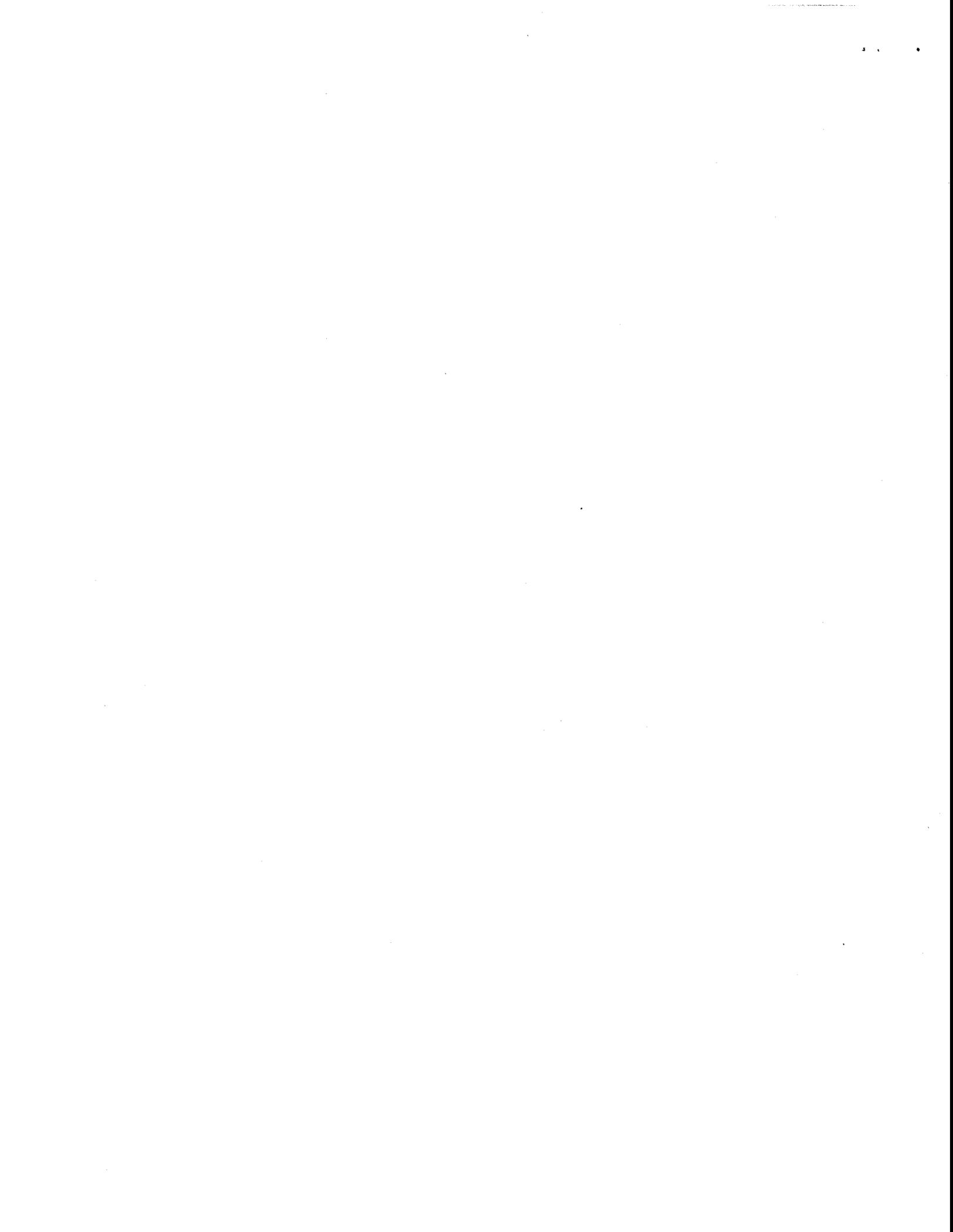
failed to properly evaluate the evidence of the record and minimized the gravity and impact of the emotional and mental abuse the petitioner was forced to endure during her marriage.

Upon review of the petitioner's statements, which are the primary sources of information regarding the alleged abuse, the AAO finds that the petitioner's statements do not establish that she was subjected to battery or extreme cruelty as required under the statute and regulations to establish eligibility for this benefit. The petitioner does not provide any testimony indicating that her spouse was physically violent. The petitioner's former spouse's abandonment of the marriage and threats to divorce the petitioner which may have been caused by his mental illness or his inability to commit to the relationship are not actions or behaviors that establish that M-S- subjected the petitioner to psychological, sexual abuse or exploitation, or that his actions were part of an overall pattern of violence. As noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9<sup>th</sup> 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 establish that M-S-'s actions 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 AAO acknowledges the petitioner's emotional distress caused by her relationship with an individual with mental health problems; however, the petitioner has not described specific incidents of verbal, mental, or emotional abuse. The general statements made by the petitioner fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that M-S-'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 record is simply insufficient in this regard.

Upon review, the petitioner's allegation of extreme cruelty is based upon her claim that the her former spouse abandoned her at least nine times and always made promises that he did not keep, as well as asking for money or a place to stay when he returned. The record, however, does not include probative testimony of specific instances of abuse that could be categorized as battery or extreme cruelty. The AAO finds that the petitioner has not provided probative evidence that the abandonment and the emotional distress caused by the break up of her marriage is sufficient to establish that she was the victim of extreme cruelty as set out in the statute and regulation.

Beyond the director's decision, we find that the petition is not approvable because the record fails to establish that the petitioner has a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen and is eligible for immediate relative classification based on a qualifying relationship with her former husband. An alien who has divorced a United States citizen may still self-petition under section 204(a)(1)(A)(iii) 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). As previously noted, the petitioner in this matter was divorced from her spouse on February 22, 2007 and filed the instant Form I-360 on October 24, 2007. As the



petitioner has failed to establish that she was battered or subjected to extreme cruelty by her former spouse, she has also failed to make the causal connection between her divorce and any abuse. Accordingly, the petitioner is also not eligible for the benefit she seeks because she has not established a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen, and also failed to establish that she is eligible for immediate relative classification based on a qualifying relationship with her former spouse.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. As always, the burden of proof in visa petition proceedings 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.

