

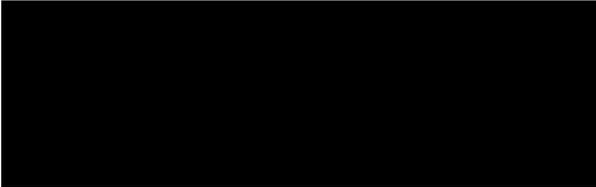
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:
EAC 08 142 50822

AUG 06 2010

IN RE: Petitioner: [REDACTED]

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

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.

Jerry Rhew
Chief, Administrative Appeals Office

of Botswana and the United Kingdom
to the Government of Botswana
the High Commission, London

1981

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 affirmed in part and dismissed in part. The petition will be denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iv) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien battered or subjected to extreme cruelty by her United States citizen stepparent.

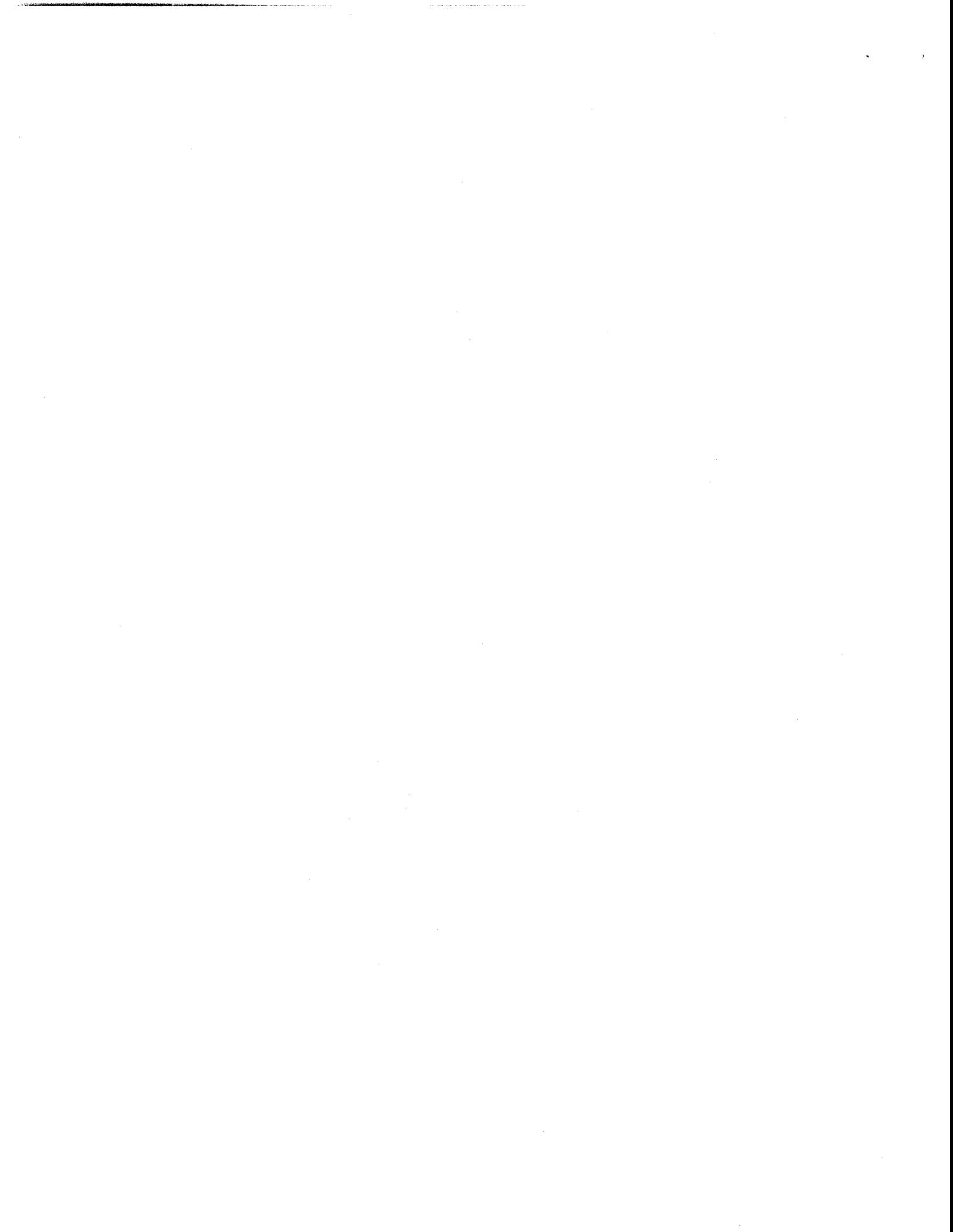
Section 204(a)(1)(A)(iv) of the Act provides that an alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act and who resides, or has resided in the past, with the citizen parent may file a petition with the [Secretary of Homeland Security] under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the [Secretary of Homeland Security] that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent.

The director denied the petition, determining that the petitioner had not established that she had resided with the United States stepparent or had been subjected to battery or extreme cruelty perpetrated by the United States citizen stepparent. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion. Based upon a review of the relevant evidence in the record, the director's decision on the issue of the petitioner's residence with her stepparent is withdrawn. We, however, concur with the director's determination that the petitioner has not established that she had been subjected to battery or extreme cruelty perpetrated by her stepparent.

The record in this matter provides the following relevant facts and procedural history. The petitioner is a native and citizen of Mexico who states on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that she last entered the United States on October 1, 2008. The record includes a photocopy of a Form I-94, Departure Record, showing the petitioner entered the United States on July 26, 2007 as a B-2 visitor. The petitioner's biological mother married D-D-,¹ the claimed abusive United States citizen, on January 31, 2003 in the State of Arizona. The petitioner's stepfather filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on December 31, 2007. The record includes Internal Revenue Service (IRS) Forms 1040, U.S. Individual Federal Tax Return, for 2004 and 2005 which show the petitioner listed as a dependent of her stepfather and biological mother. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on April 11, 2008. The petitioner states on the Form I-360 that she resided with the claimed abusive stepparent from December 1, 2002 to January 1, 2008.

The regulation at 8 C.F.R. § 204.2(e) states, in pertinent part:

¹ Name withheld to protect the individual's identity.



Self-petition by child of abusive citizen or lawful permanent resident—Eligibility.

* * *

(v) *Residence.* A self-petition will not be approved if the self-petitioner is not residing in the United States when the self-petition is filed. 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 United States 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 are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident parent, must have been perpetrated against the self-petitioner, and must have taken place while the self-petitioner was residing with the abuser.

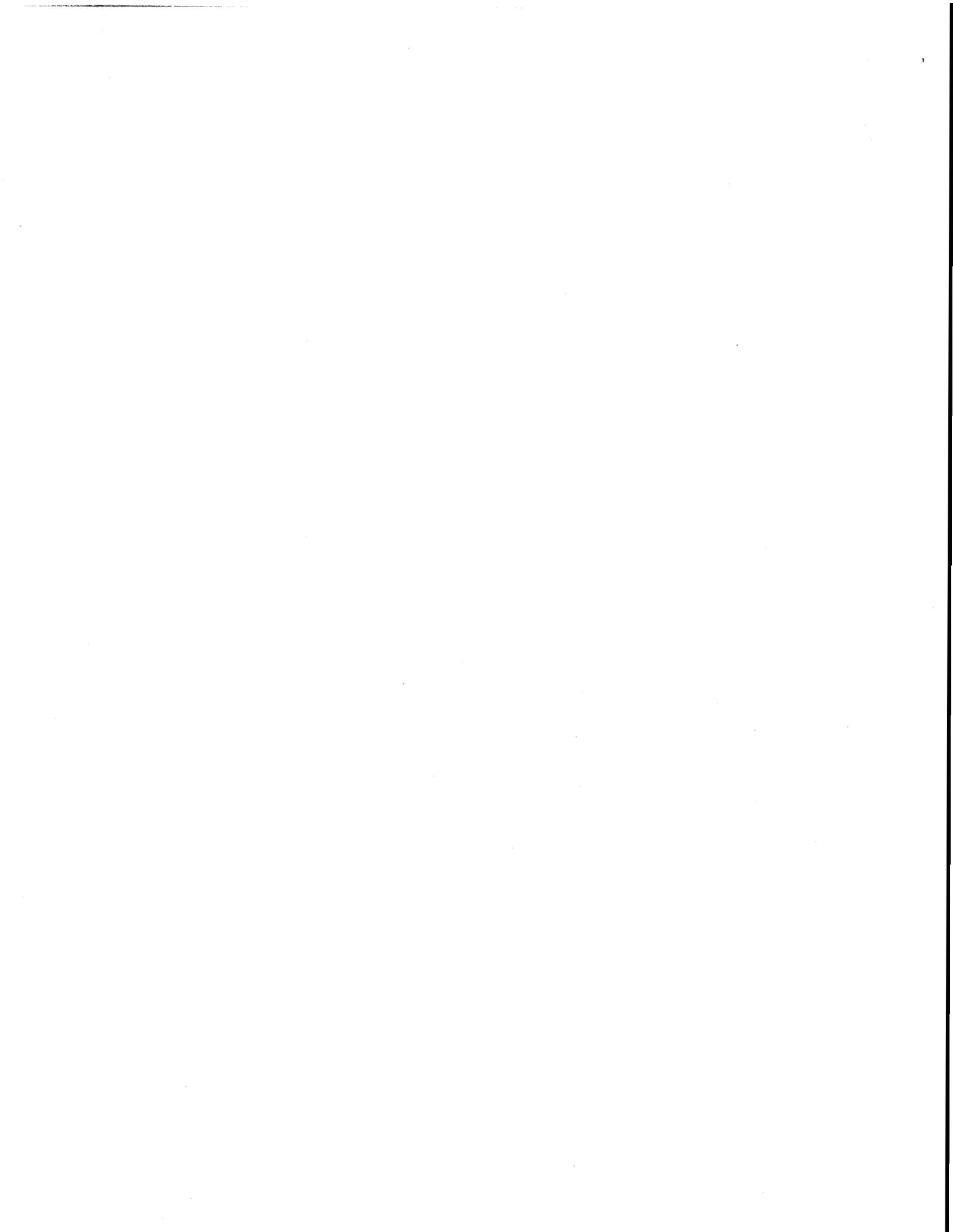
* * *

Preliminarily, the AAO finds that the 2004 and 2005 IRS Forms 1040, are sufficient in this matter to establish that the petitioner resided with her stepfather and biological mother while the couple were married. Thus, the director's decision to the contrary on this issue is withdrawn.

Turning to the issue of the claimed extreme cruelty that the petitioner was subjected to by her stepfather, the director determined that the petitioner had not submitted evidence that she had been the victim of battery or extreme cruelty perpetrated by D-D-.

On appeal, counsel for the petitioner implies that under the any credible evidence standard the submission of the psychologist's evaluation of the petitioner's mother shows that the petitioner's mother and the petitioner suffered psychological/emotional abuse perpetrated by D-D- because of his use of drugs. Upon review of the record, the AAO finds that the petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by her stepfather.

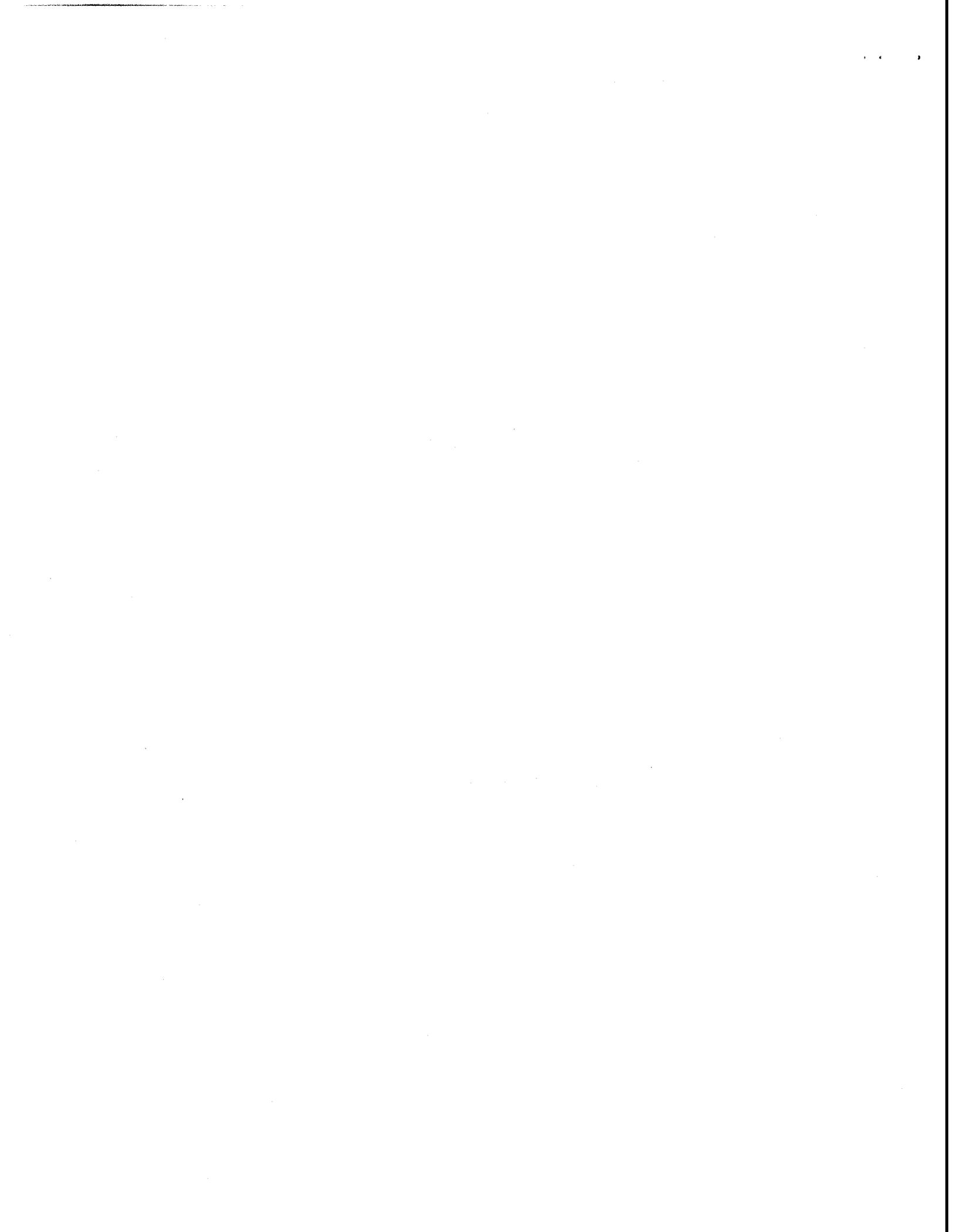
The petitioner, in a November 15, 2009 handwritten statement, stated: "[D-D-] was very supportive to me and my brothers. It was not until [D-D-] start[ed] having troubles and we had to move away from him for our own safety." The petitioner's mother, in a November 12, 2009, statement does not reference any battery. The petitioner's mother's statement relates her fear that she and her children might have been abused by D-D-'s new friends when they were under the influence of drugs. The petitioner's mother reported that she made the decision to leave the marital home with only her



personal belongings and her three children, after discovering D-D-'s friends in the house smoking a drug. The petitioner's mother also indicates that she fears that her not being able to talk about why she and the children were leaving the house gave the children insecurities. The petitioner's brother, in a November 18, 2009 statement, indicated that D-D- "got involved in some very bad things and we had to pack our things and relocate away from him for our safety." The evaluation prepared by [REDACTED], Ph.D., included the petitioner's mother's reiteration of her fear that her children might have been in danger because of D-D-'s use or selling of drugs and that the situation could result in her children's insecurity.

The AAO acknowledges that Section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(e)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of" USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(e)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(e)(2)(iv). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish his or her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(e)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

In this matter, the petitioner, her mother, and her brother fail to provide any probative testimonial evidence to support the petitioner's claim that she has been subjected to battery or extreme cruelty by her stepparent. To establish that she has been subjected to battery or extreme cruelty, the petitioner must provide sufficiently detailed instances of abuse. In this matter the petitioner has provided a personal statement that fails to describe any specific incident of abuse and only refers generally to D-D-'s troubles and moving away from him for their safety. When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The AAO does not accept generic information with little chronological timeline and no explicit descriptions of specific instances of battery or extreme cruelty to establish eligibility for this benefit. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that she has been subjected to battery or extreme cruelty perpetrated by her stepparent in order to meet her burden of proof. In this matter, she has failed to do so. General allegations of troubles and drug use, as described by her mother, are not acts that are sufficiently described to determine that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that D-D-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his



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actions were part of an overall pattern of violence. According, the petitioner has failed to establish that she was subjected to battery or extreme cruelty, as required under section 204(a)(1)(A)(iv) of the Act.

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. The petitioner has not sustained that burden.

ORDER: The appeal is affirmed in part and dismissed in part. The petition is denied.

