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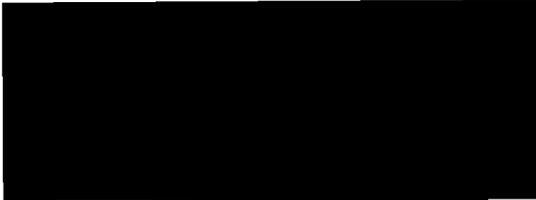
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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MAR 05 2010

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date:
EAC 07 087 50968

IN RE: Petitioner: [Redacted]

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

The petitioner seeks immigrant classification under 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.

The director denied the petition because the petitioner did not establish: (1) that she had a qualifying relationship with a U.S. citizen; (2) that she is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, based on a qualifying relationship with a citizen of the United States; (3) that she resided with her husband; (4) that her husband subjected her to battery or extreme cruelty during their marriage; and (5) that she entered into marriage with her husband in good faith.

On appeal, counsel submits a brief.

We concur with the director's determination on each of the five criteria above. Nonetheless, the case must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii) that was in effect when the petition was filed.

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

(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.

* * *

(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 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.

* * *

(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.

* * *

(vii) *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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Cambodia. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on February 5, 2007. On the Form I-360, the petitioner stated that she married S-C-,¹ on November 22, 2005 in King County, Washington. The petitioner indicated that she resided with S-C- from November 22, 2005 to December 2006 and that the last place she resided with S-C- was at an address in Lynnwood, Washington.

The director issued a request for further evidence (RFE) on February 22, 2007, notifying the petitioner she must submit evidence of her good moral character. The petitioner provided a response on April 4, 2007. On September 19, 2008, the director issued a second RFE notifying the petitioner that the marriage license she submitted was valid from January 22, 2006 to March 22, 2006 but showed that the petitioner was married on November 22, 2005, two months prior to the validity of the marriage license. The director requested that the petitioner submit a valid marriage certificate. The director also notified the petitioner that the record was insufficient in establishing: that she had resided with S-C-; that she had been subjected to extreme cruelty or abuse by S-C-; and that she had married S-C- in good faith. Counsel for the petitioner provided a response on December 12, 2008 by

¹ Name withheld to protect individual's identity.

submitting an altered marriage certificate, the petitioner's statement, and the statements of other individuals. After considering the evidence in the record, including the evidence submitted in response to the RFEs, the director denied the petition on March 25, 2009, finding that the evidence submitted did not establish: (1) that the petitioner had a qualifying relationship with a U.S. citizen; (2) that the petitioner is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, based on a qualifying relationship with a citizen of the United States; (3) that the petitioner resided with her husband; (4) that the petitioner's husband subjected her to battery or extreme cruelty during their marriage; and (5) that the petitioner entered into marriage with her husband in good faith.

As observed above, the AAO concurs with the findings of the director but will remand the matter for the issuance of a NOID.

On appeal, counsel asserts that the marriage certificate included a typographical error and submits a third version of the marriage license and an affidavit by an individual who claims to be the minister who filed the document and made the typographical error. Counsel contends that the petitioner resided with S-C- at S-C-'s father's house. Counsel references medical records submitted showing the mental instability of the petitioner's husband. Counsel avers that S-C-'s medical records should be sufficient evidence that the petitioner was being abused and had a *bona fide* marriage up until the time the couple divorced. Counsel also references the "any credible evidence" standard and asserts that United States Citizenship and Immigration Services (USCIS) may not pick and choose or focus only on primary evidence and determine that the declarations and affidavits submitted are insufficient.

The AAO observes that section 204(a)(1)(J) of the Act requires 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(c)(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(c)(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(c)(2)(iv). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish 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(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claims, 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 our review encompasses an assessment of all of the evidence submitted by the petitioner and we find that the petitioner has not submitted consistent documentary evidence, statements, and affidavits sufficient to establish her eligibility for this benefit.

Qualifying Relationship

The record shows that the petitioner entered the United States on September 9, 2005 on a K-1 fiancée visa. The petitioner noted on the Form I-360 as well as in her November 11, 2008 statement in support of the petition that she married S-C- on November 22, 2005. The photocopy of the petitioner's marriage certificate initially submitted shows that the validity of the license is from January 22, 2006 to March 22, 2006. The marriage certificate, however, also shows that the date of the marriage is "11- 22- 2005," that it was signed by the petitioner and by S-C- on "11- 22- 2005," and that it was filed January 23, 2006. On a second page attached to the certificate, there is a certification stating that the copy is the same instrument that appears of record. The director questioned the date of the marriage as it occurred two months prior to the validity of the marriage license. The director requested a marriage certificate that contained the seal of the issuing office, including the date of registration and the signature of the registrar. In response, the petitioner submitted a certificate showing the date of the marriage and the date signed as "1-22-2005." It appears the "11" on the initial submitted certificate was "whited out" leaving a "1" as the month of the marriage that was submitted in response to the RFE. The copy of the certificate has the very same certification as the original certification but includes a raised, but illegible, seal. On appeal, counsel for the petitioner submits the May 20, 2009 affidavit of [REDACTED] the individual who claims to have officiated at the petitioner and S-C-'s marriage. [REDACTED] avers that on "January 1, 2006 I officiated the marriage of S-C- and his former wife [the petitioner]." [REDACTED] further avers: "[a]lthough the Certificate of Marriage has a typographical error of January 22, 2005, I actually married the couple of [sic] January 22, 2006." [REDACTED] notes that this was a clerical mistake which should not be interpreted as the couple having been married the year previously.

The AAO finds that the inconsistencies between the marriage certificate initially submitted and the one submitted in response to the director's RFE are not resolved by [REDACTED] affidavit on appeal. The AAO finds that either the initial marriage certificate was altered to correspond with the petitioner's statements that she married S-C- on November 22, 2005 or the marriage certificate submitted in response to the RFE was altered in an unsuccessful attempt to provide a marriage date during the validity period of the marriage license. The AAO does not accept [REDACTED] explanation that he married the couple on January 1, 2006 or January 22, 2006 to be consistent testimony that would support the petitioner's claims that she married S-C- on November 22, 2005. The record does not provide legitimate, independent evidence that the petitioner entered into a qualifying relationship with S-C-.² For this reason, the petition may not be approved.

² As noted below, the record includes a discharge summary regarding S-C-'s admission to a hospital on February 3, 2006 and discharge on February 7, 2006. The doctor notes that S-C- has a long history of mental illness, has been at Stevens Hospital on two prior occasions as well as having an admission at Fairfax Hospital. The doctor notes that S-C- has auditory hallucinations and that "he feels extremely guilty owing to a report of a phony marriage with his cousin in Cambodia so that she could immigrate to the United States." In addition, the record includes an August 11, 2006 psychological assessment of S-C- wherein the doctor notes that S-C- lives with his father, keeps in contact with mother and sister, and has extended family in the area, has never been married, has no

Eligibility for Immigrant Classification

The AAO further finds that the petitioner has failed to demonstrate the requisite eligibility for immigrant classification as an immediate relative based on a marriage to S-C-. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive U.S. citizen spouse. As discussed in the preceding section, the petitioner has failed to establish a qualifying relationship with S-C-. Because the petitioner did not establish the validity of her marriage to S-C-, she is also ineligible for immediate relative classification based on her claimed former marriage.

Joint Residence

In addition to the information on the Form I-360, the record contains the following evidence relevant to the petitioner's claim that she resided with S-C-:

- The petitioner's August 2006 driver's license showing an address on [REDACTED] in Lynnwood, Washington;
- The petitioner's marriage certificate showing both the petitioner and S-C-'s address at the [REDACTED] address;
- Statements from V-C-³ the petitioner's father-in-law, [REDACTED] and [REDACTED];
- The petitioner's statement dated November 11, 2008.

As noted above, on the Form I-360, the petitioner stated that she resided with her husband from November 22, 2005 to December 2006. In the petitioner's November 11, 2008 statement, the petitioner stated: that she came to the United States on September 9, 2005; that her husband and his family picked her up at the airport; that they all felt happy and she felt good that she was finally with her husband; and that she married S-C- on November 22, 2005 and that she cooked food for them and did almost all of the household chores. The petitioner notes that in May/June of 2006 S-C- moved out of his father's house into his mother's house, but that he moved back a few months later because of his mental instability. The petitioner adds that in October of 2006 her husband kicked her out of the apartment and she stayed with a friend, but that after a few months, her father-in-law asked her to come back and live with them as he had bought a big house and needed support. The petitioner indicates that she moved back but stayed in a separate room in a different area of the house.

children, and reports no close social relationships. The doctor notes S-C-'s major life events are the divorce of his parents and two arrests as a juvenile for drug possession and a firearm charge. The doctor does not mention S-C-'s alleged interactions with the petitioner.

³ Name withheld to protect individual's identity.

The petitioner's father-in-law, in an undated statement, indicates that in 2005 the petitioner came to live with him and his son. In the statement of [REDACTED] she indicates that she visited the petitioner at her house and when she was visiting, the petitioner's husband came from "their room." In [REDACTED] November 14, 2008 statement, she noted that in October of 2006 the petitioner came to stay with her for a few months as the petitioner's husband was trying to kick her out but that when the petitioner's father-in-law bought a big house, he asked her to come back and live with him and his son. [REDACTED] noted further that the petitioner moved back into the house but stayed in a separate room from her husband.

The petitioner provides no detailed statement of the dates and addresses of, or other probative information regarding, her residence with S-C-. The petitioner's statement references living with and cooking and keeping house but she does not provide further detailed information regarding her residence(s) with S-C-. The record includes the petitioner's pay stubs for October, November, and December of 2006; however, the pay stubs do not provide the petitioner's address. Nor does the record include any tax statements or other independent legitimate documentation, other than the petitioner's driver's license issued in August 2006, showing the petitioner's address. There is insufficient information regarding the petitioner's residence while in the United States to substantiate that she resided with S-C-. The statement of the petitioner's father-in-law does not provide any detail regarding the circumstances of the petitioner residing in a particular residence. The statements of the petitioner's friends reference visiting the petitioner but do not provide evidentiary detail regarding the location or description of the place(s) the petitioner and S-C- resided together.

Upon review of the evidence submitted, the AAO finds that the petitioner has not submitted sufficient evidence regarding her residences to allow USCIS to ascertain the truth of the claims asserted, and has not provided any other evidence sufficient to meet her burden of proof regarding her claimed joint residence with S-C-. Accordingly, the petitioner has failed to establish that she resided with S-C-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

At the time of filing the petition, the petitioner submitted her marriage certificate and a copy of a discharge report regarding S-C-'s admission to a hospital on February 3, 2006 and discharge on February 7, 2006. The doctor notes that S-C- has a long history of mental illness, has been at Stevens Hospital on two prior occasions as well as having been admitted at Fairfax Hospital. The doctor notes that S-C- has auditory hallucinations and that "he feels extremely guilty owing to a report of a phony marriage with his cousin in Cambodia so that she could immigrate to the United States." The initial record did not include further information.

In response to the director's RFE, the petitioner supplied a personal statement dated November 11, 2008. The petitioner noted that she met S-C- in July 2004 when he was on vacation in Cambodia. She indicated: that her parents thought it would be best for her to marry him and their opinion was very important to her; that S-C- seemed to be a nice man, and that they got to have an engagement

ceremony and a party. The petitioner noted further that when S-C- returned to America, they talked on the phone about once a week as well as via electronic mail and that S-C- returned to Cambodia in June/July of 2005 for about a month. As noted above, the petitioner indicated that on September 9, 2005, she came to the United States and that her husband and his family picked her up at the airport, and that they all felt happy and she felt good that she was finally with her husband. The petitioner stated further that on their first day together they went to eat, drove around, and went shopping and she "felt like we were both in love." The petitioner noted that it was S-C-'s idea for her to take English as a Second Language (ESL) classes and he would drive her and pick her up from the classes. As observed above, the petitioner states that she married S-C- on November 22, 2005.

The petitioner's father-in-law, in his undated statement, indicates that he went with his friend and his son to Cambodia in 2003 where his friend introduced his son to the petitioner. The petitioner's father-in-law indicated that the couple decided to get married after spending around one month together and that in 2005 the petitioner came to live with him and his son in America. The record also includes photographs apparently of the petitioner and S-C- at a wedding or engagement ceremony.

Although the petitioner provided general information on how she met S-C-, she does not provide further detailed testimony regarding their courtship or any of their shared experiences, apart from the alleged abuse, in her statement. The petitioner does not discuss her initial interactions with S-C- in any probative detail. The record contains scant information regarding the petitioner and S-C- and the circumstances of their initial relationship and their interactions prior to the claimed marriage. The record contains conflicting statements regarding when the couple first met. There is insufficient information in the petitioner's statement to establish that she entered into the marriage in good faith.

The AAO acknowledges the statement submitted by the petitioner's father-in-law, but similarly, his statement provides no information other than that his friend introduced the couple in 2003, not 2004 as the petitioner stated. This statement and the statements from the petitioner's friends do not provide any probative details about the petitioner's relationship with S-C-, such as a description of their interactions with each other, except as it relates to the claimed abuse. The declarants do not provide information regarding the places the petitioner resided with S-C-, do not discuss or otherwise relate what the petitioner did while staying with S-C- in any probative detail, or otherwise provide detailed testimony regarding the circumstances of the petitioner's allegedly good-faith entry into the marriage. The affiants do not describe particular occasions with any specificity where they observed the *bona fides* of the petitioner's marriage. Similarly, the photographs show that the petitioner and her husband were together on one or two unidentified occasions, but this evidence alone fails to establish the requisite good faith marriage.

A finding of good faith entry into a marriage involves an exploration of the dynamics of the relationship leading up to the marriage, to determine if this was a marriage of two people intending to share a life together. For immigration purposes, evidence of good faith should demonstrate the emotional ties, commingling of resources, and shared financial responsibilities often associated with a *bona fide* marriage. In this matter, the AAO finds little information regarding the petitioner's

actual courtship and marriage to S-C-. The record contains no documentary evidence to support a finding that the petitioner entered into her marriage in good faith. The AAO acknowledges that the lack of documentary evidence is not necessarily disqualifying; however, the AAO finds that the petitioner's testimonial evidence and the testimony submitted on her behalf also fail to support a finding that she entered into this marriage in good faith. The statements submitted on her behalf are general and bare of the necessary detail required to establish that the declarants had actual knowledge of the legitimacy of the marriage. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The initial record included a one sentence statement signed by [REDACTED] on November 13, 2006 indicating that the petitioner had met with her on October 24, 2006 and November 8, 2006 to discuss issues relating to domestic violence. A second undated letter signed by a woman's advocate at the Center for Battered Women indicates that the petitioner attended a domestic violence support group on November 15, 2006.

The petitioner in her November 11, 2008 statement indicates that S-C- began to act strange in early 2006. The petitioner noted: that S-C- would throw away his clothes, DVDs, the television and other items; that he began ignoring her; that he stopped taking her to classes; that he told her she was making him sick; and that on one occasion, "he wrote religious words all over the walls of his room, with a permanent marker;" and the next day she told her father-in-law and S-C- checked himself into a hospital and stayed for one week. The petitioner also noted that S-C- seemed better when he came home but that in May 2006 he started to get sick again. The petitioner stated that on one occasion when she tried to stop S-C- from throwing his father's clothes away, S-C- pushed her into a wall, and although it hurt, not extremely so. The petitioner stated that on another occasion, when she was spending time at the apartment with her friends, S-C- came into the house and started shooting at her with a fake gun with plastic bb's. She noted that it hurt and she tried to go away from him but he kept following her around the house shooting at her. As observed above, the petitioner noted that S-C- moved into his mother's house for awhile in May/June 2006 but returned because he was destroying personal property at his mother's house. The petitioner indicated that S-C- told her he had voices in his head telling him he should get rid of her and kick her out and that in October 2006 he kicked her out of the apartment. As observed above, the petitioner also indicated that she moved back in with S-C- and her father-in-law when her father-in-law got a bigger house, but she stayed in a separate room rather than with S-C-. The petitioner noted that S-C- did not call her names or swear but would blame all his problems on her and that he yelled a lot. She noted that at some point she moved out and obtained a divorce in 2007.

The petitioner's father-in-law indicated that S-C- was hospitalized three times during the petitioner's marriage to his son and that during the marriage S-C- got angry several times and would become violent by yelling and would damage personal property and scare the petitioner, him, and her friends.

In a statement prepared by [REDACTED], [REDACTED] declares that the couple seemed happy the first seven months of marriage but then the petitioner called him and told him that S-C- was "using bad words (F words), grabbing her hand and pushing her out of the room." [REDACTED] notes that he saw a bruise on the petitioner's arm the next day. [REDACTED] in an undated statement, indicated that when she was eating at the petitioner's house, S-C- came from their room with a fake gun and plastic balls and shot at the petitioner and it hurt her. [REDACTED] noted that they were all scared and did not know what to do. [REDACTED] in her November 14, 2008 statement, indicated that the petitioner told her that S-C- would throw away their personal property and yell at her and that the petitioner was nervous to move back in to S-C-'s house when his father asked her to return.

The AAO finds in this matter that the record includes evidence that S-C- suffers from mental illness; however, the petitioner has not provided sufficient evidence that she was subjected to battery or extreme cruelty at the hands of S-C-. The AAO finds two incidents that are cause for concern: (1) the behavior of S-C- with the plastic gun on some unknown date; and (2) S-C-'s blaming the petitioner for his sickness in conjunction with a doctor's report that S-C- feels guilty about lying regarding the phony marriage with his cousin in Cambodia so she could immigrate to the United States. The current record in this matter, however, undermines the legitimacy of the circumstances of these events. As determined above, the petitioner has not provided probative evidence that she and S-C- actually married and resided together. The failure to establish these two essential elements is substantiated by the August 11, 2006 psychological report which casts doubt on the allegations of abuse allegedly suffered by the petitioner. The AAO finds that the petitioner and the statements submitted on her behalf do not provide the level of detail that would assist in verifying the circumstances of these events. For example, the affidavit of [REDACTED] provides similar general information regarding the fake gun incident but as in the petitioner's statement does not provide any details. In addition, there is no report that the police were called regarding this matter or that other people were asked to intervene. The generality of the information and bareness of detail included in the statements of both the petitioner and [REDACTED] fail to provide sufficient information to analyze regarding the truth of the matter asserted. In light of the other questionable information in the record, the AAO does not find the current record sufficient to establish that either the fake gun incident or S-C-'s blaming the petitioner for his sickness is behavior that rose to the level of extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

The petitioner in this matter has not provided detailed accounts of the alleged emotional abuse and has not provided evidence of physical abuse. The two statements prepared by advocates at the Battered Woman's Center do not provide any information regarding the claimed abuse suffered by the petitioner. The two statements, without probative information, do not assist in establishing that the petitioner suffered abuse at the hands of S-C-. Similarly, the statements provided by the petitioner's friends and her father-in-law do not include detailed information regarding specific incidents of abuse during the claimed marriage. As discussed above, the questionable information regarding the petitioner's marriage and joint residence detract from the credibility of the petitioner's description of the alleged abuse. The petitioner's failure to describe in probative detail the verbal and any physical abuse

diminishes the petitioner's claim. The AAO notes an additional inconsistency between the testimony of the petitioner who indicated that S-C- did not swear at her and the statement of [REDACTED] who declared that the petitioner called him and told him that S-C- was "using bad words (F words). Accordingly, the petitioner failed to establish that she was battered or subjected to extreme cruelty by S-C- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The record does not demonstrate that the petitioner entered into a qualifying relationship, is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act based on a qualifying relationship with a citizen of the United States, resided with S-C-, has been subjected to battery or extreme cruelty during marriage, and entered into marriage with S-C- in good faith. Despite the petitioner's ineligibility based on the present record, this case must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) that was in effect when the petition was filed. On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

As always 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.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a NOID and a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.