

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

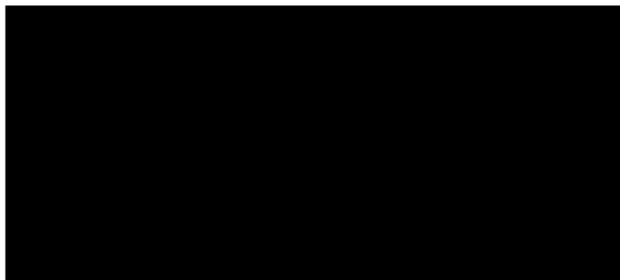
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9



FILE: [REDACTED] Office: VERMONT SERVICE CENTER

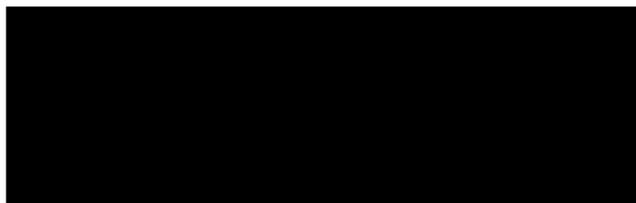
Date:

NOV 23 2010

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:

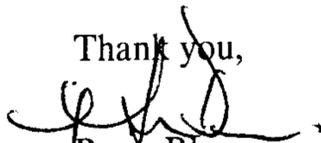


INSTRUCTIONS:

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 the \$630 fee. 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 Rhew

Chief, Administrative Appeals Office

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.

The director denied the petition on May 28, 2010, determining that the petitioner: had not established that she had been subjected to battery or extreme cruelty by her United States citizen spouse; that she had not entered into the marriage in good faith; that she had not filed a request for an exemption to section 204(g) of the Act; and that she had not established with clear and convincing evidence that she had entered into the marriage in good faith as required by section 204(g) of the Act. On appeal, counsel for the petitioner timely submits a Form I-290B, Notice of Appeal, a brief, and previously submitted documents.

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 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 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 of Hong Kong and is a British Dependent Territories Citizen.¹ She initially entered the United States on July 20, 1992 as a B-2 visitor. Her status was later changed to that of a child of a nonimmigrant student on December 14, 1992 with authorization to remain in the United States for a temporary period not to exceed the duration of status as the child of a nonimmigrant student. On November 3, 2004 a Notice to Appear was issued placing the petitioner in immigration proceedings as she no longer maintained her authorized status. While in immigration proceedings and on December 2, 2006, the petitioner married A-K-², the claimed abusive United States citizen spouse. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on or about January 8, 2007. The Form I-130 was denied on November 20, 2007. The petitioner and her claimed abusive spouse were issued a final order of divorce on January 11, 2008. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on July 8, 2008. On the Form I-360, the petitioner claimed that she resided with A-K- from December 2, 2006 to June 2, 2007. The director issued a request for evidence (RFE) on January 6, 2010 and counsel for the petitioner submitted a response dated April 1, 2010. As noted above, the director denied the petition on May 28, 2010 and counsel for the petitioner timely appealed.

Abuse

The petitioner initially submitted an April 14, 2008 personal statement as an addendum to the Form I-360. The petitioner declared: that A-K-'s excessive drinking remained a constant problem throughout the six months they shared a house; that around April 2007, A-K- began to accuse her of marrying him to get immigration status and after drinking would say that he wished he had never married her; that on May 5, 2007, after returning home from attending separate events and while A-K- was drunk, he accused her of infidelity, yelled obscenities at her, and said he wanted a divorce and when she agreed,

¹ Hong Kong, a former British colony, is now part of the People's Republic of China.

² Name withheld to protect the individual's identity.

the screaming escalated; that she called a friend to pick her up because she did not feel safe staying with A-K-; and that when she left the house with her friend, A-K- was still screaming obscenities to both her and her friend. The petitioner indicated: that she stayed with her friend for a few days; that A-K- apologized for his behavior; that she returned after A-K- said he would make a stronger effort to stop drinking; that A-K- continued to go out and drink; that she stayed with friends most nights; and although they did not have another fight, she made the decision to end the marriage and the couple separated on June 6, 2007. The petitioner noted that although she moved out of the house, A-K- continued to call and harass her and her friends when he was in a drunken state and that he would insult her family and tell her he would make it difficult for her. The petitioner indicated further: that after June 30, 200[7] communication between the couple ceased and any information that needed to be shared was shared through A-K-'s mother; that the petitioner asked her mother-in-law about seeing a professional counselor and her mother-in-law agreed that it would be a good idea; that in August 2007 she saw a counselor; that in September 2007, her friends told her they thought that A-K- had called them; that she called A-K- to ask about the calls; that A-K- admitted he had been calling her friends using her old cell phone bill; and that the couple engaged in a heated argument. The petitioner noted further that about a week after this incident, A-K- called distraught and drunk and threatened to kill himself. The petitioner noted that after October 2007 she did not speak with A-K- and the only other incident occurred when in February 2008, A-K- yelled degrading things about her to one of her friends.

The record includes a July 1, 2008 statement from [REDACTED] the petitioner's friend, who declared that A-K- was often drunk; that the petitioner had called her many times and showed up at her house over the fights she had with A-K-; that the petitioner had told her she was afraid A-K- would get physical; and that in September 2007 A-K- came to her house looking for the petitioner. The record also includes a July 1, 2008 statement signed by [REDACTED] who declared: that in May 2007, the petitioner called her and the affiant heard yelling in the background; that the affiant and her boyfriend went to pick up the petitioner; that the petitioner stayed with her for a few days; that in September 2007 she received calls from A-K- when he had obviously been drinking; and that in November 2007, A-K- called and told her that the petitioner needed to call him and he was going to report her to immigration but that he called the next day to say he was sorry.

The record also includes a December 16, 2007 evaluation of the petitioner prepared by [REDACTED] licensed clinical social worker, based on an interview conducted December 14, 2007. In the report [REDACTED] noted his belief that based on the petitioner's narrative the petitioner's "claims of spousal abuse are founded" and that the petitioner "was subjected to emotional cruelty and increasingly felt unsafe as her husband's irrational hostility escalated over time."

In response to the director's RFE, counsel for the petitioner submitted an undated letter signed by [REDACTED] who declared that he did not have a good first impression of A-K-. Counsel also provided an April 1, 2010 letter prepared by [REDACTED] licensed professional counselor who indicated that the petitioner had been referred to him by A-K-'s Employee Assistance Program, (EAP). [REDACTED] noted that he had seen the petitioner on August 28, 2007 and on September 5, 2007. [REDACTED] reported that the petitioner described her husband as having an alcohol problem and described verbal abuse but was vague as regards to physical abuse. At the time of the counseling sessions, [REDACTED]

██████████ indicated that the petitioner had concerns that if she left her marriage it would compromise her immigration status, that she reported she was pressured by her family to reconcile with her husband, and that she reported symptoms of depression with sleep disturbance for over two years.

Based on the information above, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty. On appeal, counsel for the petitioner asserts that the evidence in the record establishes that the petitioner's former spouse directed mental, emotional, and physical violence toward the petitioner and abused her repeatedly as part of an overall pattern of violence that constitutes extreme cruelty. Counsel avers that the petitioner's former spouse used the petitioner's immigration status to control and coerce her.

Upon review of the petitioner's statements in support of the petition, the petitioner has not been subjected to battery or extreme cruelty perpetrated by her former spouse. The petitioner does not directly reference any physical abuse perpetrated by A-K- and the record does not include any evidence that the petitioner was subjected to battery perpetrated by A-K-. The petitioner references the difficulties she had in her marriage with A-K- because of his abuse of alcohol. The petitioner provided a general statement noting that A-K- engaged in verbal derogatory language directed at her, that he accused her of infidelity, and that he harassed her with drunken phone calls which continued after the couple separated. The petitioner does not detail any specific threats regarding her lack of immigration status that were accompanied by violence or threats of physical or mental injury. Because the petitioner's statements are critical in establishing extreme cruelty or battery, her statements must include sufficient detail of specific events and incidents to result in a conclusion that she was subjected to either battery or extreme cruelty. The arguments described by the petitioner primarily concern A-K-'s abuse of alcohol. Considering the totality of the incidents described by the petitioner over the course of her one-year marriage, the petitioner has not described events or incidents that constitute extreme cruelty as set out the statute and regulation. Rather, as noted by the court in *Heranadez 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 establish that her former spouse's actions 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.

The AAO has reviewed the affidavits from the individuals offering evidence on behalf of the petitioner. The affiants confirm generally that A-K- had a problem with abusing alcohol and that he was verbally offensive when he had been drinking. However, arguments that include name calling and accusations of infidelity as described do not constitute extreme cruelty. The description of the petitioner's former spouse's alleged statement regarding the petitioner's lack of immigration status noted in ██████████ July 1, 2008 statement is not detailed and does not include specific information that demonstrates coercion, control or extreme cruelty. The other statements submitted do not evidence any particular incident that could be construed to constitute extreme cruelty perpetrated by the petitioner's former spouse. The declarants do not provide evidence that the

petitioner was subjected to battery or extreme cruelty perpetrated by her former husband and their statements do not assist in establishing that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that A-K-'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.

We have also reviewed the evaluation prepared by [REDACTED] and observe that [REDACTED] does not diagnose the petitioner with any mental illness or condition. In addition, [REDACTED] December 16, 2007 report is based on one meeting of unspecified length with the petitioner. As such, the report fails to reflect the insight and elaboration commensurate with an established relationship with a mental health professional and thereby renders [REDACTED] findings speculative and diminishes the value of his evaluation. Moreover, [REDACTED] evaluation does not include a reasoned opinion based on facts and clinical observations of the petitioner's behavior and affect during the evaluation that supports his conclusory statement that the petitioner's narrative demonstrates that her "claims of spousal abuse are founded" and that the petitioner "was subjected to emotional cruelty and increasingly felt unsafe as her husband's irrational hostility escalated over time." Further, as discussed above, the general statements of the petitioner do not evidence that the petitioner's difficulties in the marriage rose to the level of extreme cruelty as described in the statute and regulation. Thus, the evaluation prepared by [REDACTED] is not probative in establishing that the petitioner was subjected to battery or extreme cruelty perpetrated by her former spouse, as battery and extreme cruelty are defined in the statute and regulation.

When evaluating the record as a whole, the record lacks definitive information regarding specific instances of battery or extreme cruelty. Alcohol addiction, insults, and name calling are not considered actions of extreme cruelty in this matter. The claims made by the petitioner and the general statements submitted on her behalf, contrary to counsel's assertion, do not evidence that the petitioner's former spouse's behavior was part of an overall pattern of violence that constituted extreme cruelty. Likewise, the petitioner's former spouse's alleged statements regarding the petitioner's immigration status do not evidence the former spouse's control and coercion of the petitioner. The record is simply deficient in this regard. There is no information in the record regarding specific credible instances of abuse that could be categorized as battery or extreme cruelty. 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 former spouse in order to meet her burden of proof. In this matter, she has failed to do so.

Good Faith

The second issue in this matter is whether the petitioner has established that she entered into the marriage in good faith. In the petitioner's April 14, 2008 statement, the petitioner declared: that she met A-K- in the fall of 2004 and began dating on November 25; that A-K- initially did not know about her lack of immigration status but found out in September 2006 when she informed her friends that she was leaving the country; that A-K- proposed marriage on September 15, 2006 and she

accepted; that they moved in together but a week later, A-K- indicated that he was not ready for marriage and moved out of the apartment; and that a month later, A-K- convinced her that he was ready for marriage and they moved in together again.

In the petitioner's statements to [REDACTED] in her December 14, 2007 interview, [REDACTED] reported that the petitioner indicated: that from November 25, [2004] the petitioner and A-K- dated exclusively; that the couple repeatedly broke up because of A-K-'s drinking and behavior while drinking; that as the prospect of deportation became imminent, the petitioner began to tell people that she was leaving the United States; that when the petitioner explained her circumstances to A-K- he proposed; that the petitioner rebuffed his initial proposal because she did not want A-K- to make a rash decision to keep her in the United States; that on September 15, 2006, A-K- again proposed to her; that the petitioner accepted and was happy that A-K- had finally committed to her; that in October A-K- reconsidered his proposal and backed out; and that a few weeks later the couple reconciled and married on December 2, 2006.

In the petitioner's counseling sessions with A-K-'s Employment Assistance Program counselor, the petitioner indicated on her second visit that she had decided to get a divorce but that her family was pressuring her to stay married and that she no longer loved A-K- and wondered if she ever loved him. In the EAP counselor's final summary dated November 26, 2007, [REDACTED] noted that the petitioner was "[h]aving immigration issues after being in US for 15 years. Marital separation. Impending deportation."

In the July 1, 2008 statement of [REDACTED] she noted that she met A-K- in December 2006; that she had only been around him about 15 times; that she "never really knew him" and that she thought it "was strange considering how close [the petitioner] and [she were]." In [REDACTED] July 1, 2008 statement, she also indicated that she did not know A-K- well but had witnessed his mean temperament. The record also includes photographs of the couple at their wedding ceremony.

The director determined that the record did not demonstrate that the petitioner had entered into the marriage in good faith. Counsel, on appeal, disagrees with the director's assessment.

Upon review of the petitioner's statement, the testimony submitted on her behalf, and the information reported in her counseling session with [REDACTED] as well as in the counseling sessions with [REDACTED] the record does not demonstrate that the petitioner entered into the marriage in good faith. The petitioner's statements speak generally of dating A-K-, breaking up over A-K-'s drinking and reconciling, and the marriage proposal when A-K- learned of the petitioner's immigration issues. The petitioner does not provide substantive detailed information of her intent upon entering into the marriage. The petitioner's friends reveal that they barely knew A-K- and [REDACTED] noted that it was strange that she never knew A-K- because of how close she and the petitioner were. The petitioner's use of her former spouse's EAP counselor after she separated from her former husband does not provide any further evidence that the couple intended to establish a life together. A finding of good faith 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 record is deficient in this regard. The petitioner's marriage certificate and Form I-130 filed by her husband may confirm their marital relationship, but they do not establish the petitioner's own good faith in entering into the marriage. The photographs show that the petitioner and her former husband were together on their wedding day but do little to establish the petitioner's good faith in entering into the marriage. The record is deficient in detailed descriptive testimony evidencing the petitioner's intent when entering into the marriage.

Section 204(g) of the Act

As the director determined, section 204(g) of the Act further bars approval of this petition pursuant to 8 C.F.R. § 204.2(c)(1)(iv). Section 204(g) of the Act states:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record in this matter shows that the petitioner married her husband after being placed in removal proceedings before an Immigration Judge. The record does not indicate that the petitioner resided outside of the United States for two years after her marriage.

The AAO finds that the petitioner is not eligible for the bona fide marriage exception to section 204(g) of the Act. Section 245(e)(3) of the Act states:

Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during

deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). To demonstrate eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the petitioner must establish his or her good faith entry into the qualifying relationship by a preponderance of the evidence and any relevant, credible evidence shall be considered. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. §§ 1154(a)(1)(A)(iii)(I)(aa), 1154(a)(1)(J); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”).

As the petitioner has failed to establish that she entered into marriage with her former husband in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has also failed to demonstrate that she qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, section 204(g) of the Act requires the denial of this petition.

Beyond the decision of the director, the record lacks sufficient probative and consistent evidence to demonstrate that the petitioner resided with the claimed abusive spouse. In brief, we observe that the petitioner indicated on the Form I-360 that she resided with A-K- from the date of the marriage to June 2007. The petitioner has not provided detailed probative testimony establishing her joint residence with A-K-. The affiants who submitted testimony on the petitioner’s behalf do not describe in detail her claimed joint residence with her former spouse. The petitioner has not provided adequate, detailed, consistent testimony from either herself or others on her behalf that establish that the petitioner and her former spouse occupied a joint residence, and she has not submitted any evidence described at 8 C.F.R. § 204.2(c)(2)(iii).

Beyond the decision of the director further, pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, an alien who has divorced an abusive United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person who was a bona fide spouse of a United States citizen within the past 2 years and who 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.

In this matter, as discussed above, the petitioner has not established that she was subjected to battery

or extreme cruelty perpetrated by her former spouse. Her marriage to the claimed abusive United States citizen terminated on January 11, 2008 and she filed the instant Form I-360 on July 8, 2008. As the petitioner's marriage terminated prior to filing the Form I-360 and as she has not established that she was subjected to battery or extreme cruelty she cannot demonstrate her eligibility under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Also beyond the director's decision, the present record fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with her former spouse, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(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 spouse. Because the petitioner did not establish that she had a qualifying relationship as the spouse of a U.S. citizen at the time of filing the instant petition, she is also ineligible for immediate relative classification based on the former marriage.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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 dismissed. The petition is denied.