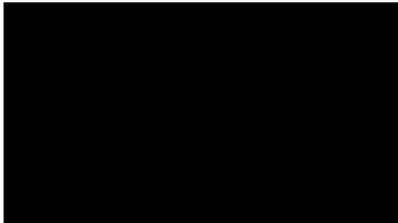


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



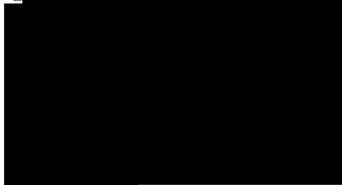
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DATE: **JUN 22 2011** Office: VERMONT SERVICE CENTER FILE:

IN RE: 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 \$630. 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 determined that the petitioner had not established that she had jointly resided with a United States citizen, that she had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse, or that she had entered into the marriage in good faith. On appeal, counsel submits a Form I-290B, Notice of Appeal or Motion, a supplemental brief, and additional documentation.

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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 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 set forth 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.

Preliminarily, we note counsel's assertion that the director did not consider the evidence submitted under the proper standard. We observe 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(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 residence, the requisite battery or extreme cruelty, and good faith 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)(ii),(iv), and (vii). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish 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 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.

Facts and Procedural History

The petitioner is a native and citizen of Colombia. She entered the United States on February 14, 2008 on a K-1 visa. On May 2, 2008, she married S-R-¹ the claimed abusive United States citizen. On November 12, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The record includes a copy of a divorce decree dissolving the marriage on December 9, 2008. On August 12, 2009, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had jointly resided with S-R-, that she had been subjected to battery or extreme cruelty perpetrated by S-R-, or that she had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, a supplemental brief, previously submitted documentation, and previously submitted documentation that now includes annotations.

¹ Name withheld to protect the individual's identity.

Residence

The petitioner in this matter indicated on the Form I-360 that she jointly resided with S-R- from February 2008 to May 2008 and indicated that the couple's joint address was on [REDACTED] Court. In the petitioner's initial October 31, 2008 statement, she noted that she lived at the [REDACTED] Court address when she first entered the United States and on March 16, 2008 she visited friends and ten days later (March 26, 2008) one of her aunts arranged for her to live with a different aunt because she no longer wanted anything to do with S-R-. The petitioner noted that she stayed with her aunt and then moved in with her cousin, [REDACTED], where she currently resides. The petitioner indicated that on April 17, 2008 she sent a note to S-R- and told him she wanted to return to Colombia; however, he convinced her to stay and the couple married on May 2, 2008. The petitioner declared that after the marriage, S-R- drove her back to her cousin's house and S-R- went on a business trip, telling her that they would live together at his house when he returned. The petitioner noted that she called him on his cell phone and a woman answered so the next time S-R- called her she told him she did not want to have anything else to do with him.

The record included the petitioner's Form G-325A, Biographical Information, showing that she moved from S-R-'s address in March 2008, prior to the marriage.

The initial also record included a March 15, 2008 police report indicating that the petitioner and S-R- resided at the same address. On a May 8, 2008 police report filed by the petitioner to get her passport from S-R-, the petitioner reported to the police that her address was on 112th Place not on SW 77 Court. In a September 18, 2008 affidavit signed by the petitioner's distant [REDACTED] declared that the petitioner resided at S-R-'s house when she initially arrived from Colombia but on one occasion prior to the marriage, S-R- was yelling at the petitioner, the police came and escorted the petitioner to her relative's house. The affiant does not provide testimony regarding the couple's residence after their marriage. The other two affidavits provided do not provide testimony regarding the petitioner's residence upon her marriage.

In response to the director's RFE, the petitioner supplied a second statement in which she again indicated that she lived at S-R-'s home when she arrived but that on the night of the wedding she stayed at her relative's house and that evening discovered that he was seeing his ex-girlfriend and that later when she called to ask for her belongings, he did not respond until the police became involved on May 8, 2008. The petitioner noted that she did not have a car and S-R- did not include her on his insurance policy as she did not drive his car. She indicated that S-R- paid the utility bills and did not see the need to include her on the accounts. She also indicated that S-R- had his own bank accounts and that they did not file taxes together. In an amended statement dated October 30, 2008, also provided in response to the director's RFE, the petitioner stated that the couple married on a Friday, May 2, 2008, and that she stayed at her relative's house after the marriage, that on Saturday she found out that S-R- was cheating on her and then, she "felt that [she] no longer want [sic] to live there." The petitioner then added that on Sunday, S-R- called her and convinced her to return to their home and even though she was scared she did return. The petitioner offered her explanation that due to her lack of experience in writing personal statements and her low self-worth, she omitted the time that she lived with S-R- after the marriage in her previous statement and in her statement to [REDACTED]. She declared that after she returned to their home "we lived in

good faith marriage with my former abuser USC husband” and that “[her] good faith marriage with [S-R-] was during the whole month of May 2007 [sic] until [she] decided to leave him at the end of May 2008.”

The petitioner also provided an amended G-325A showing that she moved from S-R-'s address in May 2008.

Based on the above information, the director determined that the petitioner had provided inconsistent information regarding her joint residence and thus had not established her joint residence with S-R-.

On appeal, counsel for the petitioner asserts that the director relies solely on the petitioner's initial Form G-325A and failed to consider that the initial G-28 contained a typographical error. Counsel contends that the police report dated March 15, 2008 is irrefutable evidence that the petitioner was residing with S-R- in March 2008. Counsel avers that the period of joint residency prior to marriage should establish joint residency as the Violence Against Women Act (VAWA) does not include a specific requirement of residency as a “married couple.”

Upon review of the information in the record, we concur with the director's assessment of the evidence. First, the director did not rely solely on the petitioner's Form G-325A, but instead evaluated her statements and found them inconsistent. The petitioner initially testified that she moved out of the [REDACTED] in March 2008 and the initial G-325A corresponded with her testimony. She also declared that they did not spend their wedding night together but that she was dropped off at her relative's house and upon learning that he was still involved with another woman she ended the relationship. Her amended statement in response to the director's RFE and the amended G-325A submitted contradicts her initial statement that she did not reside with S-R- while married. The petitioner's change in testimony to establish a joint residence with S-R- after marriage comprises inconsistent testimony and is not credible. Her explanation that she lacked experience in writing statements and her low self-worth is unpersuasive. The petitioner has not provided consistent testimony regarding the claimed joint residence.

Counsel's assertion that the claimed joint residence of the couple prior to their marriage should establish the petitioner's joint residency with S-R- is not persuasive. The term “residence” means the place of general abode; the place of general abode of a person means his or her principal, actual dwelling place in fact, without regard to intent. Section 101(a)(33) of the Act. The petitioner's primary place of abode was at her relative's house since at least March 2008. There is insufficient consistent testimony to establish that she jointly resided with S-R- up to and including the marriage ceremony; rather, her abandonment of the claimed joint residence in March 2008, establishes that her principal actual dwelling place was in fact at her relative's house. The petitioner is required to establish joint residence during the qualifying relationship. As the qualifying relationship began on May 2, 2008, her residence prior to the marriage is not relevant. The petitioner's own statements in this matter establish that she did not jointly reside with S-R-.

The declarants who submitted testimony on the petitioner's behalf do not include detailed information regarding the petitioner and S-R-'s claimed joint residence and thus are not probative in establishing the couple's claimed joint residence.

Upon review of the totality of the information in the record, the record fails to establish that the petitioner established a joint residence with the claimed abuser.

Battery and/or Extreme Cruelty

The petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by S-R- during the marriage. The petitioner reported that she discovered that S-R- was still involved with a former girlfriend on the night of or the following day of their wedding ceremony. She noted that when she confronted S-R- with her discovery he laughed at her and called her derogatory names and threatened to have her deported. She noted that she later called and asked him to return her passport and personal belongings but he did not respond.

The petitioner also provided copies of two police reports. The first police report involved a verbal dispute between the petitioner and S-R- on March 15, 2008, prior to the marriage. The police narrative indicated that S-R- believed that the petitioner was having an affair and demanded that the petitioner be deported to Colombia and that the petitioner was transported to a relative's residence and given a domestic violence brochure. The police narrative does not reference any injuries. The second police report involved an incident on May 8, 2008, a week subsequent to the marriage date. The police narrative stated that the petitioner walked into the station and complained that S-R- refused to turn over her passport and that she was given a domestic violence brochure.

The record also includes the petitioner's petition for an injunction against S-R- that was filed on April 22, 2009, wherein the petitioner stated that she had separated from S-R- in May 2008 and that S-R- showed up at her place of employment in April 2009 and at her relative's house asking for her whereabouts and requesting that information be relayed to her regarding his demands for \$8,000. Included in the petition is an indication by the court that it informed the petitioner that S-R- had divorced her in December 2008 and that the petitioner was unaware of S-R- filing for divorce. The petitioner also reported on incidents that occurred prior to marriage. An order denying the injunction was entered the same day indicating that the petitioner's allegations did not meet the statutory criteria set forth in the pertinent Florida Statutes and that there was no appearance of immediate and present danger of domestic violence as required by the Florida Statutes.

The petitioner also provided an August 23, 2008 mental status evaluation prepared by [REDACTED] [REDACTED] indicated that he reviewed the petitioner's documents and although he refers to interviewing the petitioner does not specify the date or the length of the interview. His report mirrors the petitioner's initial statement. [REDACTED] indicated that the petitioner reported that she experienced headaches, sleep disturbances, panic, fear, depression, anxiety, constant worry, and problems with memory and focus. [REDACTED] opined: "[i]t is apparent, [the petitioner] has sustained Psycho/Emotional trauma" and indicated that the

petitioner presented with symptoms of acute stress disorder (ASD). [REDACTED] also noted that when “stressors are manmade (husband’s abuse) ASD is more severe and longer lasting.” [REDACTED] noted that the petitioner “has a history of being fully functioning prior to her marriage” and that the petitioner should continue psychotherapy/psychiatric medical management for trauma, depression, anxiety, psychological symptoms. The record also included an October 21, 2009 letter signed by [REDACTED] indicating that the petitioner had been under her care due to a psychiatric diagnosis of Adjustment Disorder with Depression and noted that the petitioner went through traumatic experiences starting with her marriage to a man who was verbally and physically abusive and who tried to isolate and control her since she came to the United States. [REDACTED] indicated that the petitioner “had contracted a sexually transmitted disease from him.” The record further included a medical report dated February 23, 2009 indicating that the petitioner had contracted anal warts and a statement from counsel that S-R- had forced the petitioner to engage in anal sex resulting in the anal warts.

The record further included statements from other individuals who related incidents that allegedly occurred prior to the petitioner’s marriage to S-R- and that described S-R-’s character. The petitioner also provided photographs showing marks on her body.

The petitioner also provided a printout of a charge of battery filed against S-R- in September 1998. The printout noted that the charge was for a misdemeanor, had been nolle pros, and had been closed in December 1998.

The director observed that the photographs submitted were not accompanied by an explanation of how the injuries occurred, that the police reports referenced a verbal dispute and a complaint regarding S-R-’s refusal to return the petitioner’s passport, that the petitioner’s petition for a protective order had been denied, and that the medical documentation was mostly illegible regarding a condition that occurred in January 2009 more than eight months after her separation from S-R-. The director determined that the petitioner had not presented probative evidence that she had been subjected to battery or extreme cruelty during the qualifying relationship.

On appeal, counsel for the petitioner asserts that the director failed to consider the petitioner’s personal statements, failed to consider the affidavits of her friends, and failed to consider the psychological evaluation. Counsel notes that in making credibility determinations, due consideration should be given to the difficulties battered spouses have in obtaining documentation. Counsel avers that the May 8, 2008 police report may not rise to the level of battery or extreme cruelty on its own but that S-R- engaged in repeated patterns of using immigration-related status documents to threaten and control the petitioner and his behavior constitutes extreme cruelty as contemplated by Congress in enacting the VAWA legislation. Counsel provides photographs with annotations that regard an incident happening on March 14, 2008.

Counsel asserts that the petitioner was provided immediate relief after filing the restraining order and the director failed to consider that S-R- was charged with battery on his first ex-wife and the first wife had obtained a restraining order against S-R-. Counsel contends that this information establishes S-R-’s character and that the denial of the petitioner’s petition for a protective order

should not be used to refute the battery or extreme cruelty criterion. Counsel claims the director improperly inferred that the timing of the petitioner's medical affliction could not be attributed to S-R-'s conduct. Counsel states that evidence indicates that latent periods for condiloma may last from a few months to a few years or decades and references an American Cancer Society website.

Upon review of the record, the petitioner provides no probative testimony of battery or extreme cruelty occurring during the marriage. She indicated that S-R- laughed at her and called her derogatory names after she discovered that he was involved with his alleged ex-girlfriend, the same day they were married. She indicated that he refused to return her passport when she requested it and that he had demanded \$8,000. The petitioner does not report any offense committed by S-R- during the marriage that constitutes battery or extreme cruelty. Upon review of the incident that occurred on March 15, 2008, the police determined this incident was a verbal dispute, they did not report seeing any injuries, and they assisted the petitioner's removal from the home. This incident, even coupled with S-R-'s initial refusal to provide the petitioner her passport when she requested, does not establish a pattern or practice of violence. In addition, upon review of the petitioner's testimony regarding S-R-'s name calling, continued involvement with his girlfriend, making fun of her religion, and attempts to have sex with her, all incidents that allegedly occurred prior to the marriage, the petitioner has not provided a credible account of events that establish a pattern and practice of abuse. The record is simply insufficient in this regard. Contrary to counsel's assertion, the record does not include detailed probative, credible testimony on the part of the petitioner that shows that S-R- engaged in repeated actions regarding the petitioner's immigration-related status to attempt to control or isolate her. Likewise, upon review of the statements made by individuals on the petitioner's behalf, the affiants do not provide testimony regarding incidents that occurred during the petitioner's marriage and their assessment of S-R-'s character does not establish that S-R- engaged in a pattern or practice of violence against the petitioner that his threats were accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner.

Upon review of the medical report indicating that the petitioner contracted anal warts, the petitioner does not testify that S-R- had the condition and as counsel noted this condition may be latent for months to years, thus there is insufficient medical evidence to establish that the petitioner contracted this condition from S-R-.

Upon review of the report prepared by [REDACTED] does not provide examples of specific incidents that constitute battery or extreme cruelty under the statute and regulation and moreover does not connect specific incidents to the petitioner's ASD. We observe that [REDACTED] noted that the petitioner "has a history of being fully functioning prior to her marriage" thus seemingly discounting incidents that occurred prior to the petitioner's marriage. We acknowledge [REDACTED]'s note that when "stressors are manmade (husband's abuse) ASD is more severe and longer lasting"; however, again there is no example of the abuse to which [REDACTED] refers. Further, [REDACTED]'s report is based upon a single interview with the petitioner and, as such, it fails to reflect the insight commensurate with an established relationship with a mental health professional. His report has little probative value.

Upon review of the October 21, 2009 letter signed by [REDACTED] refers to the petitioner's traumatic experiences starting with her marriage to a man who was verbally and physically abusive and who had tried to isolate and control her since she came to the United States. [REDACTED] does not identify a specific incident or event of verbal or physical abuse that started with the petitioner's marriage to S-R- and her information that the petitioner's husband tried to isolate and control her conflicts with other evidence in the record. The record establishes that the petitioner left the claimed abuser in March 2008 to live with relatives, only a few weeks subsequent to her arrival in the United States. [REDACTED] does not support her statement that the petitioner contracted a sexually transmitted disease from S-R- with a factual or medical foundation.

Counsel's contention that a 1998 dismissed misdemeanor battery charge should establish S-R-'s character is not persuasive. The dismissed charge does not establish that S-R-'s conduct ten years later constitutes battery or extreme cruelty against the petitioner. In addition, we accord no negative weight to the order denying the petitioner's petition for a protective order; however, the petition filed and the denial order issued more than a year subsequent to the petitioner staying with S-R- does not assist in establishing the petitioner's claim that she was subjected to battery or extreme cruelty perpetrated by S-R-.

We acknowledge counsel's note that in making credibility determinations, due consideration should be given to the difficulties battered spouses have in obtaining documentation; however, the petitioner must still provide detailed, consistent, and credible testimony regarding specific incidents of battery or extreme cruelty. Upon review of the record, the petitioner has not credibly described incidents that constitute battery and the actions of S-R-, as the petitioner and the other affiants described, do not constitute extreme cruelty under the statute and regulation. The petitioner has failed to establish that S-R-'s actions were comparable to the types of 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. Nor has the petitioner provided credible testimony sufficient to establish that S-R-'s behavior was part of an overall pattern of violence or coercion. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). In this matter, the petitioner's testimony and the testimony of others on her behalf fails to establish that she was subjected to battery or extreme cruelty perpetrated by S-R-.

Good Faith Entry Into Marriage

In the petitioner's October 31, 2008, statement she declares that she met S-R-, a friend of her family in Miami, Florida, in March 2007 in Colombia when he was there on business. The petitioner indicated that in April 2007, S-R- returned to Colombia and they stayed together for three days and continued to communicate via "MSN." The petitioner stated that on S-R-'s third trip to Colombia on August 8, 2007 they had an engagement party and he returned to Colombia once more in 2007 in September to celebrate her son's birthday on September 7, 2008. The

petitioner noted that she obtained her K-1 visa in January 2008 and entered the United States on February 14, 2008. The petitioner indicated that they dined together with his father and daughter when they arrived, but that she noticed also that he acted strangely. As observed above, the petitioner indicated that she moved in with relatives in March 2008 and on April 17, 2008 asked for money to return to Colombia. The remainder of the petitioner's statement related to her claims of abuse.

The statements submitted on her behalf do not describe the petitioner's intent in entering into the relationship but rather discuss S-R-'s character.

In response to the director's RFE, counsel for the petitioner submitted invoices from hotels where the couple stayed together in Colombia, receipts showing S-R- sent money to the petitioner in Colombia, S-R-'s passport pages showing his visits to Colombia, and photographs of the couple during S-R-'s visits to Colombia and of their wedding ceremony. As observed above, the petitioner in a statement in response to the director's RFE indicated that: she did not have a car and S-R- did not include her on his insurance policy as she did not drive his car; S-R- paid the utility bills and did not see the need to include her on the accounts; and S-R- had his own bank accounts and that they did not file taxes together. In an amended statement, also submitted in response to the director's RFE, the petitioner declared that S-R-'s "abuse affected [her] quality of life and helped to deteriorate [their] good faith marriage relationship."

The director determined that the photographs did not provide evidence of the petitioner's intent in entering into the marriage, the information regarding S-R-'s visits to Colombia did not provide insight into the petitioner's intent in entering into the marriage, and her statements had diminished probative value as the director had found that she lacked credibility.

On appeal, counsel for the petitioner asserts that the photographs and S-R-'s passport pages and hotel receipts show that both the petitioner and S-R- participated in a romantic getaway and spent time together. Counsel also references an electronic transmission sent by the petitioner to S-R- on May 12, 2007 expressing her love for S-R-. Counsel notes that [REDACTED] discussed the petitioner's expectations when entering the marriage and the petitioner's belief that the relationship would be a life long friendship and commitment. Counsel attaches photographs with the petitioner's annotation of the location of each photograph, the circumstances of the photograph, and her happiness with S-R-. Counsel contends that the photographs and the mutual participation in romantic vacations and visits establish the petitioner's good faith intent in entering into the marriage.

Upon review of the evidence submitted, the petitioner has provided a cursory description of her initial meeting with S-R- and an overview of the time they spent together in Colombia. The annotated photographs of intermittent visits are insufficient to establish the petitioner's intent when entering the marriage. The petitioner has not provided probative testimony regarding her courtship with S-R-, before and after she entered the United States, probative testimony regarding their interactions in the United States prior to their marriage except as it relates to her claims of abuse, or her detailed reasons for marrying S-R- on May 2, 2008. The electronic mail transmission does not assist in establishing the petitioner's actual intent when entering into the

marriage on May 2, 2008. The statements of the petitioner's friends also fail to provide the necessary detail regarding their observations of the bona fide nature of the petitioner's marriage.

Upon review, the petitioner does not provide probative credible testimony regarding her intent when entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). The petitioner's assertions that after a month of no interaction between March 15, 2008 and April 17, 2008 and a declaration of love on the part of S-R-, she entered into a marriage with S-R- do not establish her good faith intent in entering into that marriage. The record does not include probative, credible testimony that establishes her actual intent when entering into the marriage. Upon review, the record in this matter does not include sufficient probative evidence establishing that the petitioner entered into marriage with S-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. 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. The petition remains denied.