

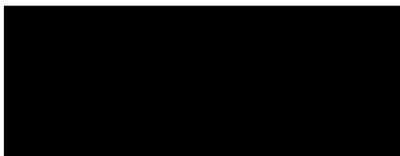
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



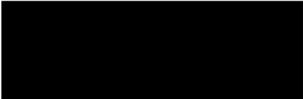
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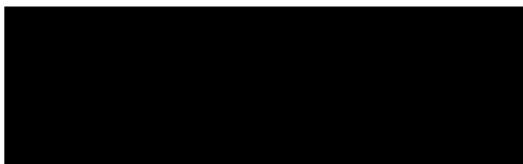
Date: **MAY 16 2012**

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:

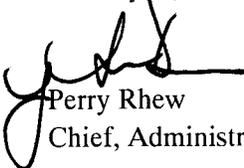


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, (“the director”) denied the immigrant visa petition. The petitioner subsequently filed a motion to reconsider. The motion was granted, but the decision to deny the petition was affirmed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extremely cruelty by her husband, resided with her husband, entered into marriage with her husband in good faith, and that she complied with the provisions of section 204(g) of the Act.

On appeal, counsel submits a brief.

Relevant 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, 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 further 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 record in this case indicates that the petitioner was in removal proceedings at the time of her marriage. In such a situation, section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes:

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 regarding the alien’s right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after her marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, 8 U.S.C. § 1255(e), which states:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) 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.

(Emphasis added)

The eligibility requirements are further explicated 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 explicated 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Moldova who was admitted to the United States on May 13, 2007, as a nonimmigrant exchange student. The petitioner filed a Form I-589, Application for Asylum, on October 26, 2007. The Form I-589 application was denied on January 30, 2008, and the petitioner was placed in removal proceedings.¹ The petitioner married M-C-, a U.S. citizen, on November 10, 2008 in Pensacola, Florida.

The petitioner filed the instant Form I-360 on August 11, 2009.² The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage, residence with her husband and her husband's battery or extreme cruelty. The petitioner, through former counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director then issued a Notice of Intent to Deny (NOID) to the petitioner based upon, *inter alia*, the petitioner's failure to establish her good faith entry into the marriage and because she is subject to the section 204(g) of the Act bar on approval of petitions based on marriages entered into while the alien is in removal proceedings. Although the petitioner timely responded with additional evidence, it was not incorporated into the record before the director denied the petition. The petitioner, through current counsel, subsequently filed a motion to reconsider with the Vermont Service Center. The director granted the motion and considered the additional evidence, but affirmed his previous decision to deny the petition.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims do not fully overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The director determined that the petitioner's testimony and the testimony submitted on her behalf were insufficient to support a finding of her good faith entry into the marriage. The petitioner initially submitted an unsigned and undated statement in which she recalled that M-C- was "very caring and sweet" when they first met. She stated that they "deeply feel in love with each other" and wed after a couple of months. The petitioner noted that "[e]verything was so great for the next two months." In response to the RFE, the petitioner submitted an affidavit, dated February 17, 2010, in which she recalled that their first two months of marriage "was perfect" and M-C- would cook her dinner, wash their laundry, and clean their home. The director correctly stated in the NOID that these affidavits

¹ The petitioner remains in removal proceedings before the Chicago Immigration Court and her next hearing is on July 31, 2012.

² The petitioner was granted a divorce from M-C- on September 28, 2010 in the Circuit Court of Baldwin County, Alabama.

failed to provide probative details surrounding the petitioner's intentions to marry M-C-, their marriage and shared experiences.

In response to the RFE, the petitioner submitted statements from her brother, [REDACTED] and her brother's former spouse, [REDACTED] who was also the petitioner's roommate during her marriage. [REDACTED] briefly discussed the petitioner's marriage, but spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. The director correctly determined in the NOID that the letters contained no probative information regarding the petitioner's intentions in marrying her spouse.

The petitioner submitted two affidavits in response to the NOID. In the first affidavit, dated August 25, 2010, she stated that M-C- was her brother's coworker and she met him in January 2008 at her brother's work party. She recalled that they went to the movies and restaurants, and she was "so happy to be with him." The petitioner stated that they decided to get married and M-C- moved into her apartment. The petitioner noted that they spontaneously decided to get married on November 8, 2008. The petitioner did not further describe how she met her husband, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse. However, the petitioner submitted a second affidavit, dated September 14, 2010, in which she explained in detail how she first met M-C-. The petitioner provided a probative account of their first date and subsequent period of courtship. She also discussed in probative detail her shared experiences with M-C-, his proposal and their wedding ceremony.

In response to the NOID, the petitioner submitted additional affidavits from [REDACTED] and [REDACTED] who explain the basis for their personal knowledge of the petitioner's marital relationship. These individuals discuss in detail their observations of the petitioner's interactions with and feelings for M-C- during their courtship and marriage.

The petitioner also submitted numerous photographs of herself with M-C- and greeting cards given to her by M-C-. The petitioner explained in her September 14, 2010 affidavit that her rent and other household bills were under her roommate's name and she and M-C- did not put any of the bills under their names because they wanted to find their own home. She stated that she could not add M-C- to her automobile insurance because he had received several tickets and the cost would have been too high. The petitioner stated that they did not have a joint bank account or file taxes together because they were together as a married couple for a short time period.

In denying the petition, the director noted several discrepancies in the evidence. The director stated that: 1) The petitioner's September 14, 2010 statement provides that she and M-C- decided to live together in the fall of 2008, but her Form I-360 provides that she resided with M-C- from May 2008; 2) The petitioner's initial statement and her February 2010 statement provide that she and M-C- decided to move in together and get married after a couple of months of dating, but her September 2010 statement and the statements from her brother provide that she started dating M-C- in January 2008, ten months prior to their marriage; and 3) The petitioner's September 2010 statement and her brother's statements provide that the petitioner accompanied her brother to his work party in January 2008 because he divorced his former wife in August 2007, but Florida vital statistics reflect that the petitioner's brother

was actually not divorced until August 2008 and USCIS records show that he filed a 2007 joint income tax return with his then wife.

On appeal, counsel asserts that the petitioner's previous counsel made a "clerical error" on the dates of joint residence provided on the Form I-360, and the "de minimus clerical error is not substantial in any sense." Counsel states that when the petitioner was discussing her period of courtship with M-C-, she used the term "a couple of months" informally, but "[i]n normal, daily conversation ten months is commonly and often referred to as a couple of months." Counsel contends that the petitioner's brother's date of divorce is "completely irrelevant" to the petitioner's claim for relief, and "it is perfectly reasonable that they were separated in August 2007 and that in March 2008, filed joint income tax returns for financial reasons." While the director has noted minor differences in the petitioner's documentary evidence, these inconsistencies are not materially significant to the extent that they detract from the credibility of the petitioner's evidence.

De novo review of the record establishes that the petitioner married her former spouse in good faith. When viewed in the totality, the additional statements submitted in response to the NOID and the photographs and greeting cards initially provided by the petitioner, demonstrate by a preponderance of the evidence that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Because the petitioner married her former husband while she was in removal proceedings and did not remain outside of the United States for two years after their marriage, her self-petition cannot be approved pursuant to section 204(g) of the Act unless she establishes the bona fides of her marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. 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 the bona fide marriage exception 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). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard.") To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) 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 credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into the 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.

Upon a full review of the evidence, we find that the petitioner has not demonstrated the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. The regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B) provides that the types of documents a petitioner may submit to establish eligibility for the bona fide marriage exemption include, but are not limited to:

(1) Documentation showing joint ownership of property; (2) Lease showing joint tenancy of a common residence; (3) Documentation showing commingling of financial resources; (4) Birth certificate(s) of child(ren) born to the petitioner and beneficiary; (5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or (6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

Here, the petitioner submitted affidavits from herself, her brother and her former roommate, and photographs of herself with M-C- and greeting cards from M-C- as evidence of her good-faith marriage. Although these documents demonstrate by a preponderance of the evidence that the petitioner entered into marriage with her former husband in good faith, they do not established her good-faith entry into the marriage under the heightened clear and convincing evidence standard. Section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

Because the petitioner is not exempt from section 204(g) of the Act, she has also failed to demonstrate her eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

Joint Residence

The director determined that the record fails to demonstrate that the petitioner resided with her former husband. On the Form I-360, which was filed on August 19, 2009, the petitioner stated that she lived with M-C- from May 2008 until “present” and that their last joint address was an apartment in Gulf Shores, Alabama. In the denial notice, the director stated that the petitioner’s claimed period of residence with M-C- on her Form I-360 is inconsistent with her subsequent testimony and divorce records, which show that she last resided with M-C- on February 18, 2009. On appeal, counsel asserts that previous counsel completed the Form I-360, and the petitioner “unknowingly attested to these dates.” Counsel notes that “cohabitation would have been physically impossible for the time period from February 2009 through July 2009, as [M-C-] was incarcerated at that time.” Counsel contends that “[a]ll other testimony and documentation indicates that February 2009 was in fact the last time the parties resided together.” Counsel has offered a credible explanation of the difference in the dates of joint residence provided on the Form I-360.

The additional affidavits from the petitioner, her brother, [REDACTED] and her former roommate, [REDACTED] submitted in response to the NOID, consistently recount that the petitioner resided with M-C- from October 2008 until February 2009. The affidavits from the petitioner and [REDACTED]

discuss in probative detail the petitioner's residence with M-C- at the Gulf Shores address. The petitioner also submitted her complaint for divorce filed on August 19, 2010 in the Circuit Court of Baldwin County, Alabama, which states that she separated from M-C- on February 18, 2009, and they have not resided together since that time. She submitted an answer to the complaint from M-C-, in which he admitted to all of the material allegations of the divorce complaint. Although the petitioner did not submit evidence of joint accounts with M-C-, she submitted cellular telephone bills addressed to her at the Gulf Shores address for the period of October through the end of December 2008. Accordingly, the record establishes by a preponderance of the evidence that the petitioner resided with her former husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty. In her initial unsigned statement, the petitioner recalled that after two months of marriage, M-C- came home at night under the influence of drugs and screamed at her for money. She stated that when she refused to give him money, he hit her. She recounted that M-C- threatened her with deportation if she called the police, called her names, beat her and took money from her bank account. The petitioner recalled that on one occasion, M-C- threw away food she made in the sink, and in the process he burned her hands with a hot pan. She stated that their marriage ended when M-C- was incarcerated for manufacturing illegal narcotics. In her affidavit issued in response to the RFE, the petitioner added that when they had arguments, M-C- would rip their pictures and throw picture frames at her. She stated that M-C- would not let her see her friends or invite them over. The petitioner reiterated these alleged instances of abuse in the two statements she submitted in response to the NOID. The petitioner's statements do not indicate that her former husband's behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Although the petitioner alleges in each of her statements that her former husband battered her, the brief descriptions of the physical abuse fail to provide probative details.

The petitioner submitted two statements from [REDACTED] who claims that she was M-C-'s girlfriend from 2006 until 2007. [REDACTED] asserted that when M-C- is under the influence of drugs, he is violent and physically abusive. [REDACTED] however, does not discuss the abuse the petitioner alleges she suffered during her marriage to M-C-.

The petitioner also submitted three signed statements from her brother, [REDACTED] and two signed statements from her former roommate, [REDACTED]. The petitioner's brother briefly described his observations of the injuries the petitioner alleges she sustained as a result of the abuse, but he indicated that he had no contemporaneous knowledge of the alleged abuse and only became aware of the incidents after the petitioner separated from M-C-. Although [REDACTED] discussed her observations of the incidents of alleged abuse, her descriptions of the abuse simply reiterate the account offered in the petitioner's statements and add no other probative details of the alleged abuse that [REDACTED] claims she personally witnessed.

The petitioner submitted a psychological evaluation, dated September 15, 2010, from [REDACTED] a licensed psychotherapist. [REDACTED] diagnosed the petitioner with major depressive

disorder and posttraumatic stress disorder. [REDACTED]'s description of the alleged abuse is brief, and simply summarizes the incidents the petitioner described in her last affidavit. While we do not question [REDACTED]'s professional expertise in assessing the petitioner's mental health, [REDACTED] did not provide probative, detailed information sufficient to establish that the petitioner's husband's behavior constituted battery or extreme cruelty.

In denying the petition, the director noted the following discrepancies in the evidence. The director stated that: 1) The petitioner's former roommate, [REDACTED] has offered three different accounts of the first alleged incident of abuse, two of which indicate that she came out of her room to protect the petitioner, and one of which states that the petitioner came to her room; 2) The petitioner did not initially disclose that [REDACTED] and her brother, [REDACTED] were once married; 3) The petitioner has failed to disclose that [REDACTED] and M-C-'s alleged former girlfriend, [REDACTED] are currently married; and 4) The petitioner claimed that she was prohibited from seeing her friends and her bank card was taken by M-C-, but she did not submit evidence to support these claims.

On appeal, counsel asserts that the first incident of abuse described by [REDACTED] "was a combination of both situations." Counsel states that "[a]s [REDACTED] exited her room to confront [M-C-], [the petitioner] entered [REDACTED]'s room to escape the situation." Counsel contends that "[i]t seems odd that the Service questions [REDACTED] and [REDACTED] previous marriage at this time, as the Service itself was aware of this fact at the time the affidavit of support was filed." Counsel contends further that in regard to [REDACTED] marriage to [REDACTED] "[t]he Service implies nefarious overtones at every opportunity without asking for any specific information"

Regardless of the discrepancies cited by the director, the petitioner has failed to demonstrate with detailed, probative evidence that she was battered or subjected to extreme cruelty by her former husband. *De novo* review of the record does not establish that the petitioner was subjected to battery or extreme cruelty during her marriage to M-C-. The psychological evaluation, supporting statements and the petitioner's own statement fail to provide probative details of the alleged abuse. The petitioner submitted photographs of faded scars on a hand and wrist, but the undated, unspecified photographs are of little probative value. Accordingly, the petitioner has not established by a preponderance of the evidence that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has established by a preponderance of the evidence that she entered into her marriage in good faith and that she resided with her husband. However, she has not overcome the director's determination that she did not establish: (1) battery or extreme cruelty during her marriage; and (2) the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Beyond the decision of the director, she has not established that she is eligible for immediate relative classification based on her marriage.³ She is consequently ineligible

³ A 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*

for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Approval of the petition is further barred by section 204(g) of the Act.

In these 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.