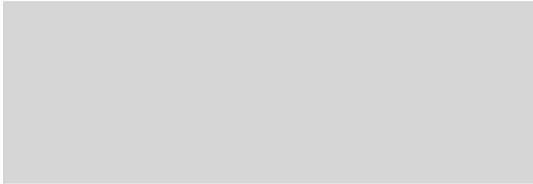




U.S. Citizenship  
and Immigration  
Services

(b)(6)



**JUL 08 2015**

DATE:

FILE #:

PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center Director (“the director”) denied the petition, and the petitioner filed an 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 a United States citizen.

The director denied the petition because the petitioner did not establish that her U.S. citizen spouse subjected her to battery or extreme cruelty.

On appeal, the petitioner submits a brief.

*Applicable Law*

Section 204(a)(1)(A)(iii)(I) 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 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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(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.

\* \* \*

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

*Pertinent Facts and Procedural History*

The petitioner was born in the Philippines. The record shows that she last entered the United States on September 13, 2008, as a B-2 nonimmigrant visitor. She divorced her first husband on [REDACTED] 2010, and married her U.S. citizen spouse, P-N-<sup>1</sup> on [REDACTED] 2011, in [REDACTED] Washington. The petitioner filed the instant self-petition on January 13, 2014. The director subsequently issued a Request for Evidence ("RFE") that P-N- subjected the petitioner to battery or extreme cruelty. The petitioner responded, but the director found the response insufficient to establish the petitioner's eligibility and denied the petition on this ground. The petitioner filed a timely appeal.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, does not establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

*Extreme Cruelty or Battery*

In her initial affidavit, the petitioner asserted that she first met P-N- through an online dating site sometime in August of 2009, and that they frequently communicated through texts, emails, and phone calls. She described their courtship and wedding ceremony on [REDACTED] 2011, and advised that their marriage was going well until "around [REDACTED] 2011." At that point, the petitioner alleged that P-N- told her that his feelings about the petitioner had changed and he had met a new girl on an online website. The petitioner recounted that they subsequently got back together but that they sometimes fought, and P-N- would threaten to tell his friends, who happened to be lawyers, that his marriage to the petitioner was fake. The petitioner indicated that she was afraid that he would do that, but that they usually reconciled after such fights. Eventually, the petitioner became pregnant

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<sup>1</sup> Name withheld to protect the individual's identity.

and attested that P-N- immediately suggested that she have an abortion, even though they had discussed having children. The petitioner indicated that P-N- initially expressed that he would provide support to her and the unborn child, but eventually came to insist that the petitioner have an abortion. According to the petitioner, in the middle of October of 2011, P-N- told her that he had once again met a girl online and was moving to Philadelphia to be with her. The petitioner recounted that P-N- told her that he was deleting the petitioner from his Facebook page so that his new girlfriend would not know about the petitioner, asked the petitioner to have an abortion, and texted her from Philadelphia to tell her that he did not want to see the baby or know its name. The petitioner indicated that P-N- advised that he would help her with her immigration papers only if she would sign an agreement saying that she would not seek support for her or the baby, and paid for all immigration filing fees and P-N-'s travel expenses. She provided a copy of the agreement dated October 25, 2011.

The petitioner described her depression after signing the agreement and indicated that she turned to her ex-husband for support, asking him to tell her family that the baby was in fact his rather than P-N-'s. When she contacted P-N- for assistance in preparing immigration-related documents, she indicated that he told her that he hoped she or the baby would die, and continued to ask her to get an abortion. Eventually, she and P-N- reconciled around the time of the baby's birth, but she indicated that she was afraid to catch a sexually transmitted disease from him so he agreed to sleep in a separate bedroom. According to the petitioner, they both did poorly at her adjustment interview "because of all the drama in [their] marriage." Even so, the petitioner indicated that their marriage continued to improve after that and they remained together until mid-August of 2012, when P-N- again indicated that he had found a new girlfriend online. The petitioner indicated that she begged P-N- not to move out because she was concerned that U.S. Citizenship and Immigration Services (USCIS) might make a house visit, but that P-N- moved out anyway. She indicated that when USCIS visited, she was at work so the officers met P-N- at a different location. The petitioner said that P-N- advised her that he told the USCIS officers that their marriage was fraudulent and that she paid him to marry her. The petitioner explained that she begged P-N- to "correct his statements because they were not true," and began to do poorly at her job because of her fear that immigration would come to her house and take her away. During this time, the petitioner indicated that P-N- threatened her with additional confessions of marriage fraud in order to gain access to their child.

In response to the director's RFE, the petitioner submitted a new affidavit, in which she indicated that P-N- humiliated her on Facebook when he announced that he had a new girlfriend, even though he was married to the petitioner. The petitioner indicated that P-N- told her that he liked his new girlfriend because she was a virgin and the petitioner, being previously married and having had a child, was not. According to the petitioner, this made her feel unclean and inferior and was emotionally devastating. She recounted that P-N- mocked her in public for being slower to walk when she wore high heels, and asserted that she eventually stopped wearing them because she felt controlled by his insulting comments. The petitioner advised that P-N- asked her to sell her car to pay for his debts, but refused to sell his own car. According to the petitioner, P-N- complained that

he had a friend who made \$20,000.00 by marrying for a green card, implying that the petitioner should be paying all expenses. The petitioner indicated that P-N- in fact expected her to pay for everything, including movies, comic books, and restaurant meals. She asserted that she eventually became threatened by his behavior and so fearful that “several people and [P-N-] would come to the house to get [her son] and put [the petitioner] in prison” that she would wake up at night, thinking that she heard pounding on the door, and constantly listened for cars outside the house. The petitioner again recounted that P-N- repeatedly threatened to confess that their marriage was fraudulent, and she eventually “bluffed” and told him that the agency had found their marriage to be valid, hoping that he would stop threatening to report their marriage as a fraud. The petitioner described one occasion in January of 2013 when P-N- came to her door, claiming that he wanted to return some utensils that he borrowed, but the petitioner indicated that she became frightened that he “could have a gun” and shoot her and her children, so she refused to open the door. She asserted that she locked herself in her room with her children and prepared to call the emergency number, 911. The applicant explained that she felt more fearful and has remained hyper-vigilant, looking outside windows to see if P-N-’s car is outside.

In response to the RFE, the petitioner also provided a psychological evaluation from a licensed psychologist, who recounted the same descriptions of the petitioner’s interactions with and feelings about P-N- as the petitioner had provided, and diagnosed the petitioner with posttraumatic stress disorder and secondary anxiety and depression. The petitioner also provided an affidavit from her former husband, L-C-, who stated that the petitioner used to be vibrant, but became sad and fearful after marriage to P-N-. He indicated that the petitioner asked him to be present at her son’s birth because she was fearful that P-N- might strangle her or kill the baby if she were to get in critical condition; however, the petitioner did not make this same assertion in her own statements and in fact indicated in her initial affidavit that she “welcomed” having P-N- back and living with her for the birth of their son “because, after all, we were still married and would be having a child soon.” L-C- also indicated that he has observed the petitioner and her son still acting fearful, looking out the window of their residence every time they hear a car.

On appeal, the petitioner asserts that her spouse’s treatment of her constituted extreme cruelty in accordance with a Ninth Circuit Court of Appeals (“Ninth Circuit”) decision in which the court determined that Congress distinguished between battery and extreme cruelty, but found that the term “[e]xtreme cruelty simply provides a way to evaluate whether an individual has suffered psychological abuse that constitutes domestic violence.” *Hernandez v. Ashcroft*, 345 F.3d. 824, 834 (9th Cir. 2003). The record does not support the petitioner’s claims.

The petitioner has not established that the facts constituting extreme cruelty in *Hernandez* are analogous to the actions of the petitioner’s wife as described in the record. The plaintiff in *Hernandez* was subjected to years of her abusive spouse’s cycle of violence including brutal beatings and a stabbing in Mexico, leaving the plaintiff bleeding and locked in the home after the attacks without medical care, constant verbal abuse, and periods of contrition and emotional manipulation to convince

the petitioner to return to him after she had sought refuge with a relative in the United States. *Hernandez v. Ashcroft*, 345 F.3d at 829-32, 840-41. The *Hernandez* court determined that the plaintiff's husband's non-physical actions "in tracking Hernandez down and luring her from the safety of the United States through false promises and short-lived contrition are precisely the type of acts of extreme cruelty that 'may not initially appear violent but that are part of an overall pattern of violence.' 8 C.F.R. § 204.2(c)(1)(vi)." *Id.* at 840.

The record does not establish that the petitioner's husband subjected her to extreme cruelty as that term is defined by the regulation or that his actions are analogous to the extreme cruelty discussed in *Hernandez*. For instance, there is no evidence that the petitioner fled her home out of fear. Instead, the petitioner stated in her affidavits that she generally lived separately from her husband before and after their marriage, and that he moved in and out of the home she shared with her uncle after seeking permission from her or when he found a new girlfriend to pursue. In this case, the record does not demonstrate that the petitioner's spouse's verbal insults, behavior, and demands were similarly part of any overall pattern of violence or otherwise constituted extreme cruelty under the regulation.

After a careful review of all of the relevant evidence, including the petitioner's brief submitted on appeal, the petitioner has not established that P-N- subjected her to battery or extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi). The record shows that the petitioner's spouse yelled at her in public for wearing high heels, threatened to report their marriage as fraudulent, asked the petitioner to abort their child, and repeatedly left her for other women. However, the record does not establish that the petitioner's spouse ever battered her or that his behavior included other actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

As it relates to the petitioner's claim of abuse, the statements of her former spouse and psychologist recount the incidents in the petitioner's affidavits, and do not include additional probative details to show that P-N- battered the petitioner or threatened her with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has not provided sufficient evidence to demonstrate by a preponderance of the evidence that P-N- subjected her to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Moral Character*

Beyond the decision of the director, the petitioner also has not established her good moral character.<sup>2</sup>

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<sup>2</sup> 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 *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

Primary evidence of a self-petitioner's good moral character is the self-petitioner's affidavit, which should be supported by local police clearances or state-issued criminal background checks. 8 C.F.R. § 204.2(c)(v). The petitioner attested that she was a person of good moral character. She also provided an Everett, Washington police department clearance; however, the results were based on a name check for only one of the petitioner's aliases, and do not include the petitioner's maiden name and the alias that the petitioner assumed during her e-mail courtship with P-N-. Because the petitioner has not provided complete police checks for all of her aliases, she also has not demonstrated that she is a person of good moral character, as required section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has not demonstrated that her U.S. citizen spouse subjected her to battery or extreme cruelty. In addition, the petitioner has not demonstrated that she is a person of good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.