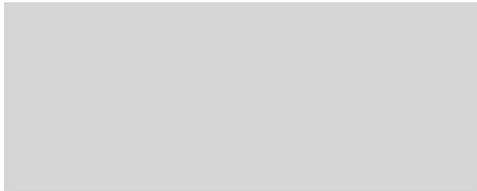


(b)(6)

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



U.S. Citizenship  
and Immigration  
Services



DATE: JUL 30 2015

FILE #: [REDACTED]  
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

*R. Rosenberg*  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 her United States citizen spouse.

The director denied the petition, finding that the petitioner did not establish that she resided with her United States citizen former husband, entered into the marriage with him in good faith, and that he subjected her to battery or extreme cruelty. On appeal, the petitioner submits a brief and background materials.

#### *Relevant Law and Regulations*

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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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 United States 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:

(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, a citizen of the Philippines, entered the United States on July 1, 2010 as a B2 nonimmigrant visitor. She divorced her first spouse from the Philippines on [REDACTED] 2011. On [REDACTED] 2011, the petitioner married A-A-<sup>1</sup>, a U.S. citizen, in [REDACTED] Nevada and they were divorced on [REDACTED] 2012. The petitioner filed the instant Form I-360 self-petition on April 24, 2014. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty, good faith entry into the marriage, and joint residence. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition, and the petitioner timely appealed.

We review these matters on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

#### *Entry into the Marriage in Good Faith*

The relevant evidence submitted below and on appeal does not demonstrate the petitioner's good faith entry into her marriage. In her initial statement, the petitioner indicated that she met A-A- in December 2004 at a Christmas party in New York and it was love at first sight. She stated that they exchanged telephone numbers but as A-A- was living in [REDACTED] at the time, they maintained a long distance relationship, communicating via telephone and text messaging often. The petitioner accepted A-A-'s marriage proposal over the telephone and stated that their telephone conversations were nice and she believed they would have a great future together. She recalled that they were married on July 8, 2011 in a [REDACTED] chapel, attended by some friends from [REDACTED]. She indicated that they honeymooned at a hotel and afterwards lived at A-A-'s home in [REDACTED]. On A-A-'s days off, they would stay home and watch television together, and she would often cook his favorite food. The petitioner indicated that she returned to New York in mid-November 2011 when her 18-year-old single daughter became pregnant. The petitioner remained there and found a job. During that time, A-A- sent his belongings to New York in anticipation of joining the petitioner there, but he did not join her in New York until June 2012. A-A- stayed in New York for two months before returning to [REDACTED]. The petitioner's statement discussed generally her relationship with A-A-, but did not otherwise provide any probative details of their courtship, wedding ceremony, joint residence, or any shared experiences apart from the claimed abuse, to establish her good faith marital intentions. In her second statement responding to the director's RFE, the petitioner asserted that she entered into her marriage with A-A- in good faith. She stated that early in their relationship, she explained to A-A- that she wanted to live in New York to be near her children, but he did not wish to live there so she agreed to move with him because he was the person she imagined her future with, even if it meant living further

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

away from her children. The petitioner also recounted hosting dinners and barbeques with A-A- after he joined her in New York. She indicated that A-A- returned to Nevada in August or September 2012 to wrap up his affairs there, but never came back to New York. The petitioner's second statement again lacked any substantive information about her and A-A-'s courtship, wedding ceremony, or any of their shared experiences aside from the claimed abuse.

The petitioner also submitted an affidavit from her daughter, [REDACTED], who briefly addressed her mother's happiness in meeting and marrying A-A- but did not substantively describe the former couple's relationship or any of her own shared experiences with them evidencing her knowledge of the petitioner's good faith marital intentions. An affidavit from the petitioner's friend, [REDACTED], also did not discuss the petitioner's good faith marital intentions and did not indicate that he ever met A-A- or interacted with him and the petitioner together. In a supplemental affidavit, Mr. [REDACTED] indicated that he visited them at their home in July 2012 for a barbeque attended by the petitioner's daughter and granddaughter, during which they discussed starting a business in New York. Although Mr. [REDACTED] stated in general terms that the petitioner and A-A- seemed happy to start a new life together, he did not provide any probative details of this or any other occasion spent with them demonstrating the nature of their relationship or the petitioner's good faith marital intentions. Lastly, the affidavit of [REDACTED] indicated that she drove from California to attend the petitioner's wedding and that she and A-A- appeared to be a happy couple, but she did not provide any probative details about the wedding ceremony and any of her shared experiences with them to demonstrate the petitioner's good faith intentions in marrying A-A-.

The documentary evidence in the record is also insufficient to establish that the petitioner entered into the marriage with A-H- in good faith. While the marriage certificate establishes a legal marriage, it does not demonstrate the petitioner's good faith intentions. Similarly, the two photographs of the petitioner and A-A-'s wedding and the remaining eight photographs of her with him on unspecified dates and occasions provide some evidence of a relationship, but they do not establish the nature of the relationship or the petitioner's marital intentions. The partial copies of two joint bank account statements from September and October 2011 reflect only nominal activity and a minimal balance, and do not show that the accounts were jointly used by both spouses. Although the petitioner submitted withdrawal receipts for the two accounts from March and July 2012, they only reflect transactions by A-A-. Another bank statement for a checking and savings account and a related January 2012 notice of insufficient funds are only in the petitioner's name, and are addressed to her in Nevada during a period when she had already relocated to New York without A-A-. Similarly, the automobile insurance policy records from March 2012 are addressed to both former spouses at the petitioner's daughter's former address at [REDACTED], but the record indicates that A-A- was residing in Nevada at the time and never resided at the [REDACTED] address. A corresponding insurance bill addressed to the former spouses at their last claimed joint residence in New York and the petitioner's health/dental application form listing A-A- as her dependent are from approximately the same period A-A- left the petitioner to return to Nevada in August or September 2012. While the New York State Department of Motor Vehicles (NYS DMV) document addressed to A-A- at the former spouse's last claimed residence demonstrates that a NYS license was issued to A-A-, it does not establish the petitioner's good faith marital intentions. The petitioner also submitted her 2011 federal and NYS income tax returns, but they indicate that the petitioner and A-A- filed their taxes separately. Further, the petitioner indicated in her NYS returns that she resided in New York 12 months of the year in 2011, contradicting her assertion in

these proceedings that she resided with A-A- in Nevada from July to November 2011. In response to the RFE, the petitioner claimed that she had relied entirely on her tax preparer to prepare the return correctly, and she submitted an amended 2011 NYS income tax return, now indicating that she resided outside New York for six months in 2011. However, the petitioner's initial execution and filing of the original 2011 NYS income tax return presumes she reviewed and affirmed the information within the document as correct, and her subsequent amendment of the NYS return was made only after the director noted the discrepancy in her claimed NYS residency. Further, the amended return indicates she began residing outside New York beginning [REDACTED] 2011, the day before her wedding ceremony. However, in her second statement, the petitioner indicated that she went to Nevada in early July to prepare for the wedding, settle into her new residence and get to know the neighborhood better, suggesting that she was in Nevada at least a few days prior to her wedding. Without a probative account of the relationship, the remaining documents, including a credit card in the petitioner's name only, a dental plan card, two envelopes only addressed to the petitioner in Nevada, a Christmas card addressed to the petitioner, two wedding cards for her and A-A-, and the petitioner's interim Nevada identification card, do not demonstrate her good faith marital intentions.

On appeal, the petitioner asserts that the director disregarded relevant and probative supporting evidence, including the amended 2011 NYS income tax returns, and failed to apply the "any credible evidence" standard applicable in these proceedings. The consideration of any relevant, credible evidence is an evidentiary standard by which United States Citizenship and Immigration Services (USCIS) adjudicates petitions under section 204(a)(1)(A)(iii) of the Act. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). However, USCIS has sole discretion to determine what evidence is credible and the weight accorded such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Under this evidentiary standard, USCIS is not required to find the petitioner's evidence sufficient to establish her good faith entry into her marriage, particularly where, as here, we have specifically noted deficiencies in the record that the petitioner has not overcome on appeal. Our review of the record indicates that the director considered<sup>2</sup> all relevant evidence and properly exercised discretion in determining the evidentiary weight of such evidence under the correct preponderance of the evidence standard. As discussed herein, the petitioner's statements, the affidavits of family and friends, and the evidence submitted below and on appeal, considered cumulatively, do not establish her good faith intent in marrying A-A-. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into the marriage with her former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Joint Residence*

The petitioner has also not established that she resided with A-A- as required. On the Form I-360 self-petition, the petitioner asserted that she and A-A- lived together from July 2011 to August 2012 and that their last joint residence was at their [REDACTED] apartment in New York. The petitioner's

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<sup>2</sup> The petitioner asserts on appeal that the director "cherry-picked" evidence that supported the denial of the petition, and thus, although referenced in the decision, did not specifically address the petitioner's automobile insurance statement. The director is not required to discuss in detail every piece of evidence. As noted, it is sufficient that the director considered all relevant evidence and properly exercised her discretion in determining their evidentiary weight.

statements have not described in any probative detail her shared residences with A-A-. The petitioner's daughter briefly indicated that her mother moved to Nevada after marrying A-A-, and later returned and reunited with her in New York, where A-A- joined them in Summer 2012. However, aside from this general assertion, she did not otherwise proffer any probative details about her shared residence with the petitioner and A-A- to demonstrate the couple's joint residence. Mr. [REDACTED] first affidavit did not reflect that he ever met A-A-, interacted with him and the petitioner, or visited them at their shared residence. Although his second affidavit indicated that he visited them at their home for a barbeque, he did not substantively describe the residence or provide probative details of the occasion sufficiently to demonstrate the petitioner's joint residence with AA-. Lastly, Ms. [REDACTED] did not indicate that she ever visited the couple at their shared residence or had any knowledge thereof.

The documentary evidence submitted to establish joint residence also does not demonstrate that the petitioner and A-A- resided together as asserted. The petitioner submitted two photographs of the claimed joint residence in Nevada, but there are no identifying markers on the images to indicate the address of the location and the petitioner's residence there with A-A-. The partial copies of two bank statements relating to a joint checking and savings accounts bearing a Nevada address disclose very little activity, have a minimal balance, and do not show joint usage. Similarly, withdrawal receipts for the accounts reflect only A-A-'s usage. A third bank statement for another account and a corresponding January 2012 notice of insufficient funds, are addressed only to the petitioner and at a Nevada address, although they are from a period when she was no longer residing in Nevada. The March 2012 automobile insurance policy records for the petitioner and A-A- are addressed to them at the petitioner's daughter's [REDACTED] address, although A-A- was still living in Nevada at the time and there is no indication that he ever resided at that address. Moreover, according to the petitioner's second statement, she also did not actually reside with her daughter at her [REDACTED] residence during that period and was instead staying elsewhere with a cousin. An automobile insurance bill addressed to the claimed joint residence in New York is from a period when A-A- left New York. The petitioner's health/dental application form, listing A-A- as her dependent, does not list an address and is dated in late August 2012, around the same period A-A- left New York permanently. The petitioner's 2011 income tax returns and subsequently amended 2011 NYS tax return also do not establish a joint residence. The original tax returns, which indicate that the petitioner filed as married, filing separately from her former spouse, were prepared in March 2012, when the petitioner indicated she was residing in New York and A-A- was still in Nevada. In addition as noted, the original NYS return inconsistently indicated that the petitioner resided in New York 12 months of the year in 2011, rather than half the year in New York and half the year in Nevada as she maintained in these proceedings. The petitioner's explanation that her tax preparer made the error and her submission of an amended 2011 NYS income tax return are insufficient to overcome the noted discrepancy, as there is a presumption that the petitioner reviewed and affirmed the information in the tax return at the time she signed and filed it. Although she later amended the NYS tax return, the amendment has diminished evidentiary value, given it was made only after the discrepancy was noted in the director's RFE. The remaining relevant documentary evidence, including a dental plan card, two envelopes addressed only to the petitioner in Nevada, A-A-'s NYS DMV notice, and the petitioner's interim Nevada identification card, considered cumulatively, do not demonstrate the petitioners joint residence with A-A-.

On appeal, the petitioner asserts that the director acted contrary to congressional intent by disregarding relevant and probative supporting evidence, and that the evidence of record, in the aggregate,

demonstrate that the petitioner resided with A-A-. The petitioner notes that the director did not specify whether or how certain referenced evidence was considered. As previously stated our review of the record indicates that the director considered all relevant, probative evidence and exercised proper discretion in determining their evidentiary value. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i) (USCIS has sole discretion to determine what evidence is credible and the weight accorded such evidence). The petitioner's statements, the supporting affidavits, and the documentary evidence, considered cumulatively, do not establish her joint residence with A-A-. Accordingly, the record does not establish that the petitioner resided with her former spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### *Battery or Extreme Cruelty*

The petitioner has also not established that A-A- subjected her to battery or extreme cruelty during their marriage. The relevant evidence in the record includes: the petitioner's statements; a psychological evaluation and letter by Dr. [REDACTED] M.D.; prescription records; and the affidavits of her daughter, pastor, and friends.

In her initial statement, the petitioner stated that after she and A-A- married, he started making rules for her while they were still residing in Nevada, requiring her to stay home and be available for him. She indicated that as she did not have a job and had no car for transportation, this did not trouble her. However, the petitioner recounted how after A-A- joined her in New York in June 2012, he continued his controlling behavior and would often shout at her, humiliating her in front of her daughter and grandchild. She stated that after he returned to Nevada, A-A- started verbally abusing her over the telephone, demanding money, and repeatedly threatening her with divorce and deportation for sending money to him late. In her subsequent statement, the petitioner reiterated that her former husband frequently shouted at her during 2012 and in front of her daughter and grandchild in order to humiliate her. She indicated that she found A-A- "extremely disrespectful, rude, and overly possessive," and that his frequent outbursts made her feel powerless and scared and she dreaded going home. The petitioner stated that A-A- continued to be cruel over the telephone after he returned to Nevada, demanding money and threatening to divorce her or withdraw the immigration petition he had filed on her behalf. The petitioner stated that after months of this, she required medication to manage her resulting anxiety and later, sought counseling. The petitioner, however, did not describe in any probative detail, any specific incident of abuse. Her statements, which generally described the claimed emotional abuse by A-A-, provided no context as to when the incidents of claimed abuse occurred and do not demonstrate that her former spouse battered her, or that A-A-'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).

The psychological assessment by Dr. [REDACTED] indicates that the petitioner grew depressed and anxious as a result of A-A-'s emotional and psychological abuse. Although the assessment referenced generally A-A-'s controlling nature, demands for money, and threats of deportation against the petitioner, it too did not provide any probative details regarding any specific instances of battery or extreme cruelty inflicted on the petitioner by A-A-. While we do not question Dr. [REDACTED]' professional expertise, her assessment is based on and relays only the petitioner's statements during her interviews with her, and provides no further, substantive information regarding the claimed abuse.

A subsequent letter (and corresponding prescription) from Dr. [REDACTED] from October 2014, indicated that the petitioner had been diagnosed with Major Depressive Disorder, Panic Disorder without Agoraphobia, Post-Traumatic Stress Disorder, and Insomnia, but did not establish any causal relationship between the claimed abuse and the diagnoses and still did not include substantive information about such abuse. On appeal, the petitioner asserts that Dr. [REDACTED]'s assessment and follow-up letter fully corroborate the petitioner's claimed abuse, and that the director erred in disregarding the assessment because it was based on the petitioner's own statements. However as noted, notwithstanding that the assessment relayed the former spouses' history as told Dr. [REDACTED] by the petitioner, it set forth only a general account of the claimed abuse without the probative details necessary to demonstrate that A-A- subjected the petitioner to battery or extreme cruelty.

The affidavits of the petitioner's daughter, pastor and friends also did not establish the requisite battery or extreme cruelty. Her daughter indicated that she witnessed the petitioner's telephone conversations with A-A- devolve into shouting and screaming and that after A-A- moved in with them in New York, he yelled at her mother in front of her. However, she did not further describe, or provide any probative details of, any specific incident of claimed abuse. Likewise, neither of Mr. [REDACTED] statements referenced any claimed abuse by A-A-. Ms. [REDACTED] stated that the petitioner relayed to her that she was unhappy with A-A-, who was always asking her for money, but her affidavit did not reference any awareness of abuse by A-A- against the petitioner. A letter from Pastor [REDACTED] indicated that the petitioner sought his guidance in October 2012, at which time she told him that her former husband was verbally and emotionally threatening her with deportation and arrest if she did not meet his demands for money. However, his letter conveyed only what the petitioner relayed to him after she and A-A- separated and did not provide any substantive information regarding the claimed abuse.

Relying on *Hernandez v. Ashcroft*, the petitioner contends on appeal that A-A- exerted "complete dominance and control over [the petitioner by repeatedly] undermining her sense of self-worth through deep humiliation, and that such non-physical acts by an abusive spouse rise to domestic violence when tactics of control are intertwined with the threat of harm in order to maintain dominance over the victim spouse. 345 F.3d 824 (9th Cir. 2003). In *Hernandez*, the U.S. Court of Appeals for the Ninth Circuit specifically recognized the "substantial evidence regarding the cycle of violence" in the petitioner's relationship there that acted as a backdrop for finding that other nonviolent actions of the petitioner's abusive spouse ("luring her from the safety of the United States through false promises and short-lived contrition") constituted extreme cruelty. 345 F.3d at 837, 840 (emphasis added). Here, the petitioner's statements, the supporting affidavits, and the psychological evaluation and letter do not set forth sufficient probative details about the claimed psychological abuse to demonstrate that A-A- "exerted complete dominance and control" over the petitioner or otherwise, subjected the petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner further asserts that the director disregarded relevant evidence in the record and applied an "unduly restrictive, unwarranted and inappropriate standard of review," rather than the "any credible evidence" standard applicable in these proceedings. As previously discussed, our review of the record does not show that the director acted contrary to Congressional intent by placing a more restrictive burden on the petitioner or requiring her to produce specific evidence to establish the requisite battery or extreme cruelty. To the contrary, the record indicates that the director considered the probative value of all of the petitioner's evidence under the "any credible evidence" standard and properly

exercised discretion in determining the evidentiary weight of such evidence, to conclude that the petitioner has not demonstrated by a preponderance of the evidence the requisite battery or extreme cruelty. Thus, upon *de novo* review of the record in its entirety, the petitioner has not established that A-A- 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 not overcome the director's grounds for denial as she has not established that she entered into her marriage to A-A- in good faith, resided with him, and that he subjected her to battery or extreme cruelty during the marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.