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

U.S. Citizenship and Immigration Services

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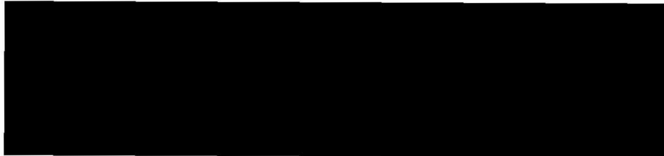
FILE: EAC 05 200 52378 Office: VERMONT SERVICE CENTER Date: APR 13 2009

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting 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 petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 husband subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief and additional evidence.

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, 8 U.S.C. § 1154(a)(1)(J) 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:

> (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.

The evidentiary guidelines for a self-petition filed 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.
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> * * *
>
> (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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Russia who was admitted into the United States as a K-1 nonimmigrant fiancée on November 21, 2004. On January 9, 2005, the petitioner married D-L-[1], a U.S. citizen, in Sacramento, California. On February 9, 2005, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, which was denied on May 26, 2005, based upon the withdrawal by D-L- of the affidavit of support that he had previously filed on the petitioner's behalf. On April 19, 2005, D-L- filed a petition for Dissolution of Marriage in the Superior Court of California, County of Sacramento.

The petitioner filed the instant Form I-360 on July 7, 2005. On December 1, 2005, the director issued a Request for Evidence (RFE) of, *inter alia,* the requisite battery or extreme cruelty. The petitioner, through counsel, submitted a timely response. On June 22, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded to the NOID with additional evidence. On March 9, 2007, the director denied the petition on the aforementioned ground. Counsel timely appealed.

On appeal, counsel claims that, although she was not physically abused, the petitioner was sexually abused and exploited by her husband. Counsel states, "[The petitioner] was abused because her husband tried to force her to not only accept his involvement in public trampling with other women

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[1] Name withheld to protect individual's identity

and pornography, but to participate herself for money." Counsel further claims that under the Ninth Circuit Court of Appeals' decision in *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003), Congress intended relief for abused spouses to be generous and flexible given the harm they have suffered or fear. Counsel also claims that the director made multiple legal errors and thus the petitioner's due process rights were violated. Counsel requests that the appeal be sustained and the petition approved or, in the alternative, that the case be remanded to the director for reevaluation using the proper credibility and evidentiary standards.

As we discuss in detail below, the actions and incidents described in the petitioner's statements and on her behalf fail to establish the requisite battery or extreme cruelty and we find no error in the director's determination that the petitioner's husband did not subject her to extreme cruelty.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the following, relevant evidence:

- The petitioner's affidavits dated May 30, 2005, July 5, 20005, October 25, 2005; March 22, 2006, and August 16, 2006;
- Numerous emails of D-L-'s involvement in trampling;
- The petitioner's husband's profile from
- A "Power and Control" wheel from the Domestic Abuse Intervention Project in Duluth, Minnesota;
- A letter dated February 23, 2005, from D-L-, withdrawing his affidavit of support;
- Internet information about " " and pictures of the petitioner's husband's participation in such activities;
- Email messages related to the petitioner's husband's foot fetish, including one dated March 10, 2005, in which the petitioner's husband mentions that his "new wife has had a change of heart with [his] life style and adventures";
- Printouts from the petitioner's husband's website " ";

  Email messages from the petitioner, her husband, and other individuals concerning the marital problems between the petitioner and her husband;
- A letter dated May 4, 2005, from the petitioner's husband, entitled "Additional reasons

for issuing a withdrawal of affidavit of support," listing various reasons, including the petitioner's statement: "If you try to divorce with me, I will call the police and tell them my husband beats me and have you arrested";

- A Premarital Agreement dated January 7, 2005, signed by the petitioner and her husband;
- Verification of Attendance of WEAVE (Services for Victims of Domestic Violence and Sexual Assault and Their Families) Orientation Sessions forms, dated June 20, 2005 and June 24, 2005, respectively, listing the petitioner's name;
- A Weave Counseling Telephone Assessment, dated July 20, 2005;
- A letter dated October 24, 2005, from WEAVE, reflecting, in part, that the petitioner attended a "Domestic Violence Counseling Intake" on September 6, 2005 and five subsequent domestic violence counseling sessions;
- Counselor's notes from the petitioner's WEAVE counseling sessions;
- WEAVE counselor's November 1, 2005 "Termination Report";
- Photos of the petitioner and her husband;
- Documents related to the petitioner's foreign education;
- A letter dated October 5, 2005, from the assistant principal of Fremont School for Adults in Sacramento, California, stating that on several occasions, she witnessed the petitioner's distraught state in the classroom;
- A psychological evaluation of the petitioner, dated February 8, 2006, from
- Evidence of medical tests performed on the petitioner;
- Witness letter, dated January 19, 2006, from stating, in part, that he drove the petitioner to the house of his brother-in-law for temporary shelter;
- Witness letter, dated March 3, 2006, from stating, in part, that the petitioner stayed at his house on June 4-5 and June 11-12 [2005]; and
- A "Complete Divorce File Received from [the petitioner's] Divorce Attorney."

In her May 30, 2005 affidavit, the petitioner states that she met D-L- on the Internet on September 23, 2003, and that they met in Moscow in November 2003, after which D-L- filed a fiancée petition on her behalf. The petitioner explains that she informed D-L- that she had to financially support her mother and her aunt, and that prior to her visa interview at the American Embassy in Moscow, D-L- informed her that he would not be able to support her mother and her aunt. The petitioner states that she arrived in the United States on November 21, 2004, that D-L- insisted that she sign a prenuptial agreement on January 7, 2005, and that two days later on their wedding day, D-L- told her that he was not going to marry her because she had spent more than two hours ironing her wedding dress the night before, but then he changed his mind and married her. The petitioner also states that she inquired into studying medicine in the United States, which her husband misunderstood as having to pay for it, and that her husband also misunderstood her dream to go to Hollywood as a serious plan, as she never asked him to take her to Hollywood or pay for such a trip. The petitioner states that she was unfamiliar with U.S. culture, such as behaving calmly and quietly, and going to a minister for counseling, as proposed by her husband. The petitioner also states that her husband accused her of breaking his friend's kayak and filed for an annulment of their marriage, that she then called the police to ask them for a place to stay, that the police delivered her to an apartment of a Russian woman, and that her husband subsequently took her back to his house. The petitioner states that her husband "applied for the work permit, for the Green Card and the Affidavit of Support" but "refused to apply for the travel document" to allow her to travel to Russia to see her mother and her aunt. The petitioner reports that she threatened to call the police if her husband threatened to divorce her and that when she commented to her husband and friends that her bruises on her hip and arm were the result of her husband's beating, she was only joking. The petitioner also reports that her husband sent money to her mother and her aunt, but refused to allow her to seek further financial help from her rich friend in France. The petitioner states that she feared that her husband did not provide medical insurance for her, as she suffered from kidney problems, but her husband provided her with medical assistance when she had problems with her tooth and her heart. The petitioner also states that during one of their arguments, her husband told her he was going to divorce her, that the following morning, she received the official divorce papers, and that, she has apologized to him for her mistakes, and that she and her husband continue to love each other and live together.

In her July 5, 2005 affidavit, the petitioner states that she resided with her husband from November 21, 2004, when she arrived in the United States, until June 4, 2005, when her husband ordered her to leave his house. The petitioner also states that when her husband visited her in Moscow, he told her that he had a foot fetish and loved to be trampled by other women and horses, which she then did not understand to be a sexual perversion. The petitioner explains that after her arrival to the United States, her husband told her about "Foot Night Parties," that he wanted her to participate in such parties with him, that she was stunned, shocked, and repulsed by such activities, and that she told him that it was against her moral values. She states, "I realized that [D-L-] gets a very strong sexual perverted satisfaction when women trample him in high heel shoes." The petitioner states that two days before their wedding, D-L- threatened not to marry her unless she signed a prenuptial agreement and did not give her a chance to "get a help of the attorney." The petitioner also states that her husband also told her that she had to pay half of all expenses in their marriage and that after their

wedding, her husband wanted her to go to "Foot Night Parties" where she could earn $20.00 for ten minutes of walking in high heels over other men. The petitioner states that her husband also wanted her to study books, watch videos/DVDs, and look at photos related to his foot fetish. The petitioner also states that after becoming depressed and suffering from lack of sleep, headaches, pain in her heart, she went to two "WEAVE" orientations and is waiting for counseling.

In her October 25, 2005 affidavit, the petitioner states, in part, that she was divorcing her husband because when she married him, she "did not agree to participate in his 'public foot-fetish, sexual activities', and [she] did not agree to ever trample on other men for money as he wanted [her] to do."

In her March 22, 2006 affidavit, the petitioner reiterates that her husband ordered her to leave his house in early June 2005, and states that, although he never physically abused her, he raised his hand and threatened to have "immigration" take her away in handcuffs and put her in jail if she did not leave. The petitioner claims that while she attended medical school, she did not study any courses on foot fetishes and trampling, that her husband intentionally misled her and withheld information about the sexual nature of his fetishes, that she did not understand all of his personal Internet profile that mentioned his enjoyment of a woman dancing on him, and that her husband kept his foot fetish a secret from his family, friends, clients, and employees, even though he participated in trampling activities in an HBO special and also appeared in pictures and videos on the Internet. The petitioner also reports that her husband told her that he would not marry her unless she signed a prenuptial agreement and that she did not understand much of what it meant, and that her husband forced her to use birth control. The petitioner states that she did not know why her husband thought that she would be supportive of hiring prostitutes to trample him or that she would prostitute herself, trampling other men for money, and that she told her husband that it was immoral and illegal and refused from the beginning to go along with his demands that she read books on fetishism, watch trampling videos, or view pictures of her husband being trampled by other women. The petitioner states, "I believe [D-L-] divorced me because I would not trample other men for money and because I objected to him being involved in sexual activities with other women, paying them to trample him." The petitioner also states that she called the police from her cell phone when her husband informed her that he had filed for an annulment of their marriage because she did not know what else to do. She also states that she wrote her May 30, 2005 letter without the assistance of an attorney and that in that letter, she did not mention her husband's foot and trampling fetishes because she did not want to expose his secrets or harm him and because he made her promise not to tell anyone, and that in her July 2005 statement, she did not mention the kayak incident she had mentioned in her May 30, 2005 statement because by then, she knew the true reason for the annulment. The petitioner also states that her husband had sufficient funds to pay for her travel document because he had sufficient funds to pay hundreds of dollars at his "Foot Night Parties" and he also took her, his sister, and one of his employees to Los Angeles for a music industry show, which cost him seven to eight thousand dollars. The petitioner states that she only gradually came to understand the extent of her husband's foot and trampling fetishes and that he eventually pushed her to go to Foot Night parties and trample other men for money, and that he was paying for prostitutes and wanted her to become a prostitute.

In her August 16, 2006 affidavit, the petitioner reiterates that she did not mention her husband's foot fetish in her May 30, 2005 statement because she did not want to harm him by making his foot fetish public and she did not think at that time that their marriage was over.

The petitioner states that her husband did not subject her to battery. Accordingly, we will only discuss the petitioner's claim of extreme cruelty. Her testimony does not indicate that her husband's behavior rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). As discussed in detail by the director in his decision to deny, the petitioner's statements and supporting documentation do not establish that her husband subjected her to psychological, sexual abuse or exploitation, or that his actions were part of an overall pattern of violence.

The psychological evaluation from also fails to establish that the petitioner's husband subjected her to extreme cruelty. states that the petitioner was referred by an unspecified source for an evaluation of domestic/spousal abuse, and lists his sources of information as a "face-to-face" interview with the petitioner of unspecified length, documents that she left with him, and psychological testing. conveys the petitioner's description of her husband's foot/trampling fetish, stating that such things are not typically taught in medical school, and thus "it does not seem unusual that [the petitioner] would not have extensive prior knowledge of fetishism from her education and training." concludes: "Fetishes which involve having one's wife provide sexual stimulation to other men for money do not promote healthy relationships. When this is a condition of a relationship with a clear power differential (she had not means of support and was dependent on him for a visa), it is an abuse of power and considered exploitation. The resultant mental distress is evident from the WEAVE shelter notes." does not indicate that he treated or recommended any treatment for the petitioner.

The WEAVE counselor's November 1, 2005 "Termination Report" also fails to establish that the petitioner's husband subjected her to extreme cruelty. The counselor indicates that the petitioner completed seven "1:1" sessions, that she "was a very enthusiastic and participating client" and that she "shared all her experiences from her abusive relationship and actively worked at how she could help herself." The counsel recommended "crisis line as needed and evaluation." Although the counselor referenced the petitioner's marital problems discussed in the therapy sessions on the "running record form," the counselor provides only vague and general examples or descriptions of the petitioner's alleged abuse, such as the petitioner "reported grieving a lot over the [relationship] and wanting to move forward."

While we do not question the expertise of and the WEAVE counselor, their testimony fails to establish that the behavior of the petitioner's husband rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). reiterates the petitioner's description of the petitioner's marital history, but does not provide a diagnosis or recommended treatment. The WEAVE counselor provides only general information pertaining to the petitioner's marital problems, but does not does not provide substantive, probative information indicating that the petitioner's husband's

behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

On appeal, counsel asserts that the email from the petitioner's husband to is the "smoking gun" that corroborates the abuse suffered by the petitioner from her husband. In this email, the petitioner's husband describes the petitioner as having a "change of heart with [his] lifestyle and adventures" and that he "may have to make some adjustments to her status as [his wife]." Counsel states, "The only reasonable interpretation of [D-L-]'s email is that he stated that he planned to divorce [the petitioner] because she opposes his public trampling activities, pornography, and/or that he is divorcing her because she refused to participate in these activities herself." The AAO disagrees that counsel's interpretation is the only reasonable interpretation. Evidence in the record indicates that the petitioner was aware of D-L-'s foot/trampling fetish, public and private, before they married, and that she conducted her own research on foot and trampling fetishes, which she provided to D-L-, and participated in her husband's foot/trampling fetish. Upon review of the record in its entirety, the AAO finds that a more reasonable interpretation of D-L-'s email, described above, is that upon the petitioner's arrival into the United States, she wanted D-L- to change his lifestyle. The petitioner states in her March 22, 2006 statement that while she was in Russia, D-L- sent her links to the websites and The petitioner's claims that "she didn't understand it all" and that "[t]here was no indication of the sexual nature of his foot and trampling fetish on his website" are not credible. While fetishes may not have been a part of the petitioner's medical curriculum, the evidence in the record, as discussed above, indicates that not only did the petitioner participate in foot/trampling activities with D-L- starting with their first meeting in Russia, but that, also prior to their marriage, she researched foot/trampling fetish related links provided by D-L- and, in addition, provided D-L- with the results of her own Internet research on foot/trampling fetishes. It is noted that the petitioner's divorce attorney describes her as "remarkably intelligent." The record contains no evidence in support of the petitioner's and counsel's assertion that the petitioner's husband "tried to force her to not only accept his involvement in public trampling with other women and pornography, but to participate herself for money." Rather, the evidence suggests that after her arrival to the United States, the petitioner's priorities changed from wanting to share D-L-'s foot/trampling fetish lifestyle to continuing her medical studies. It is additionally noted that although the petitioner states that her husband never physically abused her, she admits that she threatened to call the police if her husband threatened to divorce her and that she commented to her husband and friends that her bruises on her hip and arm were the result of her husband's beating. Her explanation that she was only joking is not credible.

On appeal, counsel also asserts that the petitioner's husband showed a pattern of domination and control in their relationship that fits the pattern of domestic violence because he: refused to pay for a reentry permit; was opposed to the petitioner's medical training in the United States and thus deprived the petitioner of the ability to provide additional money to her mother and aunt; forced the petitioner to sign a prenuptial agreement she did not understand two days before the wedding; threatened to cancel the wedding; and threatened to withdraw the petitioner's immigration-related papers. As discussed above, we find the record insufficient to establish the petitioner's claim of abuse, as these claims

regarding D-L's non-physical actions do not constitute extreme cruelty. The actions of D-L- did not include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution and the relevant evidence does not demonstrate that his behavior was accompanied by any coercive actions or threats of harm that were aimed at ensuring dominance or control over the petitioner. *See* 8 C.F.R. § 204.2(c)(1)(vi). Further, as discussed above, the record contains significant, unresolved inconsistencies and discrepancies regarding the alleged abuse. We, therefore, concur with the finding of the director that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

On appeal, counsel cites the Ninth Circuit Court of Appeals' decision in *Hernandez v. Ashcroft*, 345 F.3d 824, 833-35 (9th Cir. 2003), as a standard for evaluating extreme cruelty. The *Hernandez* case addressed the issue of extreme cruelty in the context of determining the alien's eligibility for suspension of deportation under former section 244(a)(3) of the Act, 8 U.S.C. § 1254(a)(3) (1996). *Id.* at 835-36. The *Hernandez* court gave deference to the definition of extreme cruelty in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), as used in former section 244(a)(3) of the Act. *Id.* at 839. Specifically, the court cited the regulations prescription that: "[o]ther 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." *Id.* at 839 (quoting 8 C.F.R. § 204.2(c)(1)(vi)). Inasmuch as the court interpreted this provision of the regulation, the *Hernandez* decision is a binding precedent. However, the relevant evidence in this case fails to demonstrate that the actions of the petitioner's husband constituted extreme cruelty under the court's interpretation in *Hernandez.*

In *Hernandez,* the petitioner had been violently physically assaulted by her spouse on several occasions. After two assaults, which took place while Hernandez resided with her spouse in Mexico, Hernandez fled to the United States fearing that her spouse would be able to find her in Mexico. After a time, the petitioner's spouse obtained Hernandez's phone number in the United States and persuaded her to let him visit her in the United States. Once in the United States, Hernandez's spouse convinced Hernandez of his remorse and agreed to marriage counseling. The two returned to Mexico where, after a brief period, Hernandez was again brutally attacked by her spouse. After receiving medical treatment for her injuries, the petitioner returned to the United States. The petitioner was placed in proceedings and sought suspension of deportation. The immigration judge denied Hernandez's suspension request finding that her testimony lacked credibility and that she failed to prove that she was a victim of domestic violence. On appeal to the Board of Immigration Appeals (BIA), the BIA reversed the Immigration Judge's adverse credibility determination but concluded that because the physical violence occurred in Mexico, Hernandez was unable to show that she had been battered by or subjected to extreme cruelty in the United States.[2] In reviewing the BIA's decision, the Ninth Circuit found there was no dispute that the abuse suffered by the petitioner in Mexico would qualify as battery or extreme

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[2]Although the current law does not contain the requirement that the abuse have occurred in the United States, the law applicable at the time of Hernandez' petition did include this requirement.

cruelty. The sole question considered by the Court was whether Hernandez's spouse's actions "in seeking to convince [her] to leave her safe haven in the United States in which she had taken refuge can be deemed to constitute extreme cruelty." *Id.* at 836. In determining that the petitioner had been subjected to extreme cruelty, the court found that the "interaction between Hernandez and her spouse in Los Angeles made up an integral stage in the cycle of domestic violence, and thus the actions taken by Hernandez's spouse in order to lure Hernandez back to the violent relationship constitute extreme cruelty." *Id.*

These facts are not comparable to the instant case in which the petitioner has not shown that there was any cycle of domestic violence. The Ninth Circuit recognized that the interaction that took place between Hernandez and her spouse in the United States was during "a well-recognized stage within the cycle of violence," known as the "contrite" phase, which is both "psychologically and practically crucial to maintaining the batterer's control." *Id.* at 828. In *Hernandez,* the court also recognized that "by defining extreme cruelty to encompass 'abusive actions' that 'may not initially appear violent but that are part of an overall pattern of violence,'" the regulation at 8 C.F.R. § 204.2(c)(1)(vi) "protects women against manipulative tactics aimed at ensuring the batterer's dominance and control." *Id.* at 840.

While the petitioner claims she opposed her husband's trampling activities, she fails to demonstrate that her husband threatened her with physical or psychological harm or used other manipulative or coercive tactics to ensure her participation in such activities. As the court recognized in *Hernandez,* "every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence" and Congress "required a showing of extreme cruelty in order to ensure that [the special suspension of deportation provision] protected against the extreme concept of domestic violence, rather than mere unkindness." *Id.* at 840. The petitioner's relationship, as documented in the record in this case, falls far short of the court's interpretation of extreme cruelty and the cycle of abuse discussed in *Hernandez*. The evidence in the record fails to establish that the petitioner was the victim of any act or threatened act of violence or that her spouse's non-physical behavior was accompanied by any coercive actions or threats of harm or that his actions were aimed at insuring dominance or control over the petitioner. Accordingly, the petitioner has failed to establish that she was subjected to extreme cruelty during her marriage.

On appeal, counsel also claims that the director violated the petitioner's right to due process by not addressing her explanation of inconsistencies in the record and not granting her the opportunity to respond to adverse credibility determinations made in his final decision. We find no error in the director's actions. The director granted the petitioner two opportunities to respond to noted inconsistencies through the RFE and NOID. On appeal, the petitioner was afforded a third opportunity to submit further evidence and assertions to support her eligibility. Counsel submitted a brief and additional evidence on appeal. Even if the director had not properly addressed the evidence, the petitioner has not demonstrated any resultant prejudice that would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

Counsel further asserts that the director applied an incorrect standard when evaluating the petitioner's credibility and improperly required corroborative evidence. Counsel is again mistaken. The statute mandates that USCIS "shall 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 provision prescribes an evidentiary standard. *See* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). This evidentiary standard is not equivalent to the petitioner's burden of proof in this case, which, as in all visa petition proceedings, is the preponderance of the evidence. *In re Cabrera*, 21 I&N Dec. 589 (BIA 1996); *Matter of Patel,* 19 I&N Dec. 774 (BIA 1988); *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. Corroborative evidence is not required when the relevant evidence is credible and demonstrates the petitioner's eligibility. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). In the RFE, NOID and decision in this case, the director addressed the relevant evidence in detail and explained the insufficiency of that evidence to establish the petitioner's credibility and eligibility. We find no error in the director's decision.

The petitioner does not claim and the record does not indicate that the petitioner's husband subjected her to battery. The relevant evidence also fails to demonstrate that the petitioner's husband subjected her to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.