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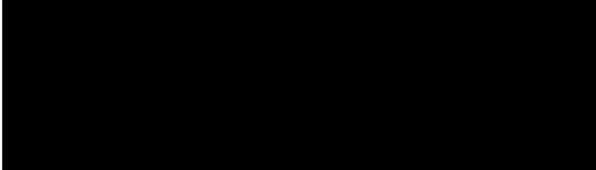
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:) [REDACTED]
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Office: VERMONT SERVICE CENTER

Date: DEC 28 2007

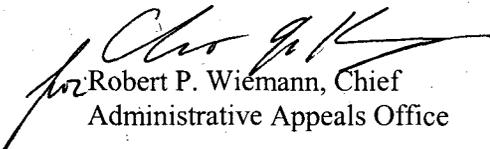
IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Battered 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:
[REDACTED]

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.


for Robert P. Wiemann, 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 he resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse during their marriage, that he is a person of good moral character, and that he entered into his marriage in good faith. Additionally, the director found that section 204(g) of the Act barred approval of the petition.

Counsel for the petitioner submits a timely appeal.

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 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 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.

(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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse*. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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.

* * *

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Pakistan who originally entered the United States on January 16, 1990 without inspection. On that same date, the Service issued an Order to Show Cause (OSC) and placed the petitioner in deportation proceedings. On January 17, 1990, the petitioner was convicted under 8 U.S.C. § 1325 for Illegal Entry into the United States.¹ Although the petitioner failed to appear before the immigration court on at least two occasions the court did not issue a final order. The immigration bond filed on his behalf, however, was breached on February 17, 1993. On October 21, 1997, the petitioner married S-J-², a U.S. citizen, in Westchester, New York. On December 17, 1997, S-J- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. S-J- withdrew the Form I-130 petition on December 16, 2005 and a Notice to Appear was issued. The petitioner filed this Form I-360 on January 30, 2006. Proceedings against the petitioner were administratively closed on February 14, 2006. On January 31, 2007, the director issued a Request for Evidence (RFE) of the requisite residence, battery or extreme cruelty, and good moral character. In addition, the director requested clear and convincing evidence of the petitioner's good-faith entry into marriage. In response, on March 27, 2007, counsel for the petitioner requested additional time in which to respond to the RFE. On April 6, 2007, the director issued a Notice of Intent to Deny (NOID) the petition on the same grounds noted in the RFE. The petitioner, through counsel, responded on May 4, 2007 with additional evidence. The director denied the petition on July 10, 2007 on the four grounds cited in the RFE and NOID and counsel timely appealed.

On appeal, counsel claims that the petitioner met his burden of proof and that the director disregarded the evidence submitted by the petitioner related to his claim of abuse, good faith marriage, and good moral character. Counsel does not address the director's finding as it relates to the petitioner's residence. As discussed below, counsel's claims on appeal fail to overcome the grounds for denial.

Residence

On the Form I-360, the petitioner indicated that he resided with his spouse from September 1997 until September 2003 and that he last resided with his spouse at [REDACTED], New York. With his initial submission, the petitioner submitted copies of two leases signed by the petitioner and his spouse dating from September 1997 through August 2001 for the [REDACTED] Street address. In his RFE, the director indicated that the leases were not sufficient to establish the petitioner's residence with his spouse and requested additional evidence including a list of all addresses where the petitioner lived with his spouse during their marriage. The director made the same request in his NOID. The petitioner submitted no further documentary evidence of his residence. While counsel claimed that further documents were "not accessible" to the petitioner,

¹ United States District Court, District of Vermont, Case Number: [REDACTED]

² Name withheld to protect individual's identity.

counsel does not provide any description of the documents that purportedly exist but are “not accessible.” Regardless, without an explanation from the petitioner himself regarding the existence of these documents and their inaccessibility, counsel’s statements will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

While the petitioner did submit statements from friends, the statements lack probative information regarding the petitioner’s residence with his spouse. The statement provided by [REDACTED] indicates only that he visited the petitioner in his “home in New York on several occasions,” while the statement from [REDACTED] indicates that he “visited the couple several times” and “dropped them off at their house in Fresh Meadows.” Apart from the claimed abuse, the acquaintances provide no specific details of the dates of the petitioner’s residence with his spouse, their specific address, or a description of their residence.

No further testimonial or documentary evidence was submitted on appeal and, as previously noted, counsel’s statement on appeal does not address the director’s findings regarding the petitioner’s failure to establish that he resided with his spouse. As discussed above, we concur with the findings of the director that the petitioner failed to establish that he resided with his spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Beyond the decision of the director, we note numerous discrepancies in the record which further preclude a finding that the petitioner resided with his spouse as claimed. The first discrepancy relates to the petitioner’s claim of when he first began residing with his spouse. On the Form I-360, the petitioner claimed that he first began residing with his spouse in September 1997. However, on the portion of the petitioner’s marriage certificate which is labeled, “Affidavit,” and was signed by the petitioner and S-J- on October 20, 1997, S-J- indicated that she resided at [REDACTED] in the Bronx, New York, while the petitioner indicated his residence at the [REDACTED]. This diminishes the probative value of the lease submitted by the petitioner as the “Affidavit” shows S-J- residing at a different address than the one listed on the lease signed nearly two months earlier.

The second discrepancy relates to the date the petitioner claimed to have last resided with his spouse. On the Form I-360, the petitioner indicated that he last resided with his spouse in September 2003 at [REDACTED] in Queens, New York. However, the list of addresses provided by the petitioner in response to the director’s NOID indicated that he no longer resided in New York in September 2003. In fact, the list shows that the petitioner moved to Texas in September 2001. Moreover, the petitioner’s personal statement contradicts both the claim made on Form I-360 and the list submitted in response to the NOID. In his personal statement, the petitioner claimed that in August 2000 he “walked out of the apartment [he shared with his spouse] and never went back to her.” Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Battery or Extreme Cruelty

As testimonial evidence to support his claim of abuse, the petitioner submitted a personal statement and statements from friends. In his personal statement, the petitioner claimed that his spouse took drugs, drank alcohol, was "rude," "disrespectful," "jealous," and "possessive" and that she threatened to have him deported. The petitioner indicates that he left his spouse when he caught her at their apartment with another man. The statement from [REDACTED] describes the petitioner's spouse as "very abusive" but provides no specific details of how the petitioner was "mistreated" other than to say that he witnessed the petitioner being cursed at by his spouse. Similarly, [REDACTED] generally claims that the petitioner's spouse was "violent and abusive," and used obscene language and describes an incident in a restaurant when the petitioner's spouse yelled at the petitioner and threw food at him.

The petitioner also submitted two doctor's letters and an evaluation. The first letter, from Dr. [REDACTED] although diagnosing the petitioner with "peripheral vertigo," does not relate the petitioner's symptoms or diagnosis to the claimed abuse. The second letter, submitted by Dr. [REDACTED] indicates that the petitioner is being treated for depression, anxiety disorder and high blood pressure, but also fails to relate the petitioner's condition and treatment to the claimed abuse. Although Dr. [REDACTED] also submitted an evaluation of the petitioner, the evaluation states the petitioner has been through "a great stress" and that he had "been black mailed by his wife multiple times." While Dr. [REDACTED] concludes that he has no doubt that the petitioner has been "physically and psychologically abused" and attributes the petitioner's post-traumatic stress disorder as arising from the "inhumane and un-loyal behavior of his wife," Dr. [REDACTED] does not provide any probative details regarding the claimed abuse.³

While the claims discussed above are not sufficient to establish a claim of extreme cruelty, we do find that the petitioner has adequately demonstrated that he was battered by his spouse. In his statement the petitioner claims that his spouse was physically violent on several occasions and describes one incident where his spouse threw a television remote control at him and a second incident where his spouse pushed him down the stairs, resulting in the petitioner breaking his leg. In his statement, Ashraf Ispahani, a friend of the petitioner, describes this second incident in detail. He states:

After noticing her behavior for [sic] few days they spent with us, I was a little skeptical about inviting people over to my house for dinner. But, I decided to invite some of my friends anyway who also knew [the petitioner] After all the party was in honor of the couple For about an hour or so, the whole ambiance was good. It looked like [the petitioner's spouse] was also having a good time talking to people. Once she started drinking she could not control herself. She became loud and started talking bad about [the petitioner] in front of all the

³ On appeal, the petitioner submits additional evidence from Dr. [REDACTED]. The evidence, however, contains no further probative details regarding the petitioner's claim of abuse. Rather, as characterized by counsel, the additional evidence from Dr. [REDACTED] was submitted to refute the director's finding that Dr. [REDACTED] evaluation of the petitioner was based upon a single visit.

guests. Looking and feeling embarrassed, [the petitioner] started to walk upstairs thinking that she was going to follow him there and they could settle whatever she was upset about in the room, instead of in front of the guests. I was watching all of this, then she all of a sudden told [the petitioner] that she was feeling better and wanted to go back to the party. As [the petitioner] turned to back to go down the stairs, she pushed him and he fell from the top of the staircase.

The petitioner also submitted copies of emergency department records from Harbor-UCLA Medical Center documenting the petitioner's treatment for a broken ankle. Although the report does not provide specifics regarding how the injury occurred, other than to state that the petitioner was injured in a "fall," we find this documentation, along with the petitioner's and [redacted] statements regarding the incident, to be sufficient to establish that the petitioner was battered by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, we hereby withdraw this portion of the director's decision.

Good Moral Character

At the time of filing, the petitioner submitted no evidence to support his claim of good moral character. Both the RFE and the NOID addressed this deficiency. Moreover, in the NOID, the director noted that the petitioner failed to address his January 26, 2006 arrest for assault and requested the petitioner to "explain the specifics behind this arrest and submit all associated documents with final disposition...." The director's NOID also reiterated the language contained in the RFE that primary evidence of good moral character is an affidavit from the petitioner and *police clearances* from each place the petitioner resided for at least six months during the three-year period prior to filing.

In response to the director's NOID, the petitioner submitted awards and letters from council members of Houston City, members of Congress, and others expressing gratitude for the petitioner's donation of goods, his volunteerism, and participation in political campaigns. The petitioner also submitted a disposition for his arrest which indicated that charges against him were dismissed on April 27, 2007.⁴ Although the petitioner also submitted a letter from the Consulate of Pakistan in Houston, Texas which indicated that "per Consulate record[s]," nothing adverse had been found against the petitioner, the petitioner did not submit a clearance from any state or local police department, as required by the regulation at 8 C.F.R. § 204.2(c)(2)(v).

On appeal, counsel asserts that the disposition submitted by the petitioner is sufficient to show that he had "no criminal convictions." We find this document is not sufficient to establish the petitioner's good moral character. Specifically, it does not contain information regarding all possible arrests or charges against the petitioner and is limited to records retained by the Harris County District Court. As such, it cannot be substituted for a police clearance from the state of Texas or any of the local districts

⁴ Harris County District Clerk Court/Case No.: [redacted]

within Texas where the petitioner resided.⁵ Moreover, although the petitioner refers to his “community service,” his awards, and being a volunteer soccer coach, his personal statement does not discuss his arrest as requested by the director and does not indicate whether or not he has had any other criminal history. Accordingly, we concur with the finding of the director that the petitioner failed to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Good Faith Entry into Marriage

As testimonial evidence of his good faith marriage, the petitioner submitted a personal statement and statements from friends. However, the statements contain no probative testimony regarding how the petitioner met his spouse, their courtship, wedding, or any specific details of their shared experiences, apart from his spouse’s abuse. The petitioner also failed to submit any documentary evidence in support of his claim of a good faith marriage.

On appeal, counsel argues that the petitioner’s friends’ statements “evidence the fact that the [petitioner] and his spouse were openly staying with each other as husband and wife.” As discussed above, however, we find the testimonial evidence lacks specific and probative details which establish both that the petitioner resided with his spouse and that he entered into his marriage in good faith. Counsel further argues that the petition cannot be denied “solely on the ground that the [petitioner] does not possess documentary proof of co-habitation when the beneficiary fled from his spouse due to the abuse and has stated that all documentation is in the possession of the abusive spouse.” While we concur with counsel that the absence of documentary evidence is not necessarily disqualifying, in this instance the petitioner’s testimonial evidence does not describe evidence such as tax information, financial documents, car, life or health insurance, that he obtained with his spouse and does not make any claim that such documentation is currently within the possession of his spouse. Moreover, contrary to counsel’s assertion, the petitioner has never claimed to have “fled” from his spouse. Instead, as previously noted, in his personal statement the petitioner did not describe fleeing from his spouse in fear, but rather leaving under his own volition after finding her with another man in their apartment.

Given the inadequacy of the testimonial evidence regarding joint assets, specific shared events and details to show that the petitioner intended to establish a life with his spouse and the lack of any supporting documentary evidence, the petitioner has failed to demonstrate that he entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Section 204(g) of the Act states:

Restriction on petitions based on marriages entered while in exclusion or

⁵ We note that there are 222 county courts in Texas. See <http://www.courts.state.tx.us/> [accessed on December 18, 2007].

deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record in this case shows that the petitioner married his spouse while still in proceedings. There is no evidence that proceedings were canceled or terminated and that the petitioner resided outside of the United States for two years after his marriage. We note that although the director denied the petition, in part, because of the petitioner's failure to request a bona fide marriage exemption in writing, as counsel correctly notes, such a request was made in the petitioner's response to the director's NOID. Accordingly, we hereby withdraw that portion of the director's decision.

The bona fide marriage exception to section 204(g) of the Act does not apply to the petitioner. Section 245(e) of the Act states:

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

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). To demonstrate eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any relevant, credible evidence shall be considered. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(aa), (a)(1)(J); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(8)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard").

As the petitioner has failed to establish that he entered into his marriage with his spouse in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, he has also failed to demonstrate that he qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, section 204(g) of the Act requires the denial of this petition.

The petitioner has failed to demonstrate that he is a person of good moral character, who resided with his spouse and entered into their marriage in good faith. Section 204(g) of the Act further bars approval of this petition.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.