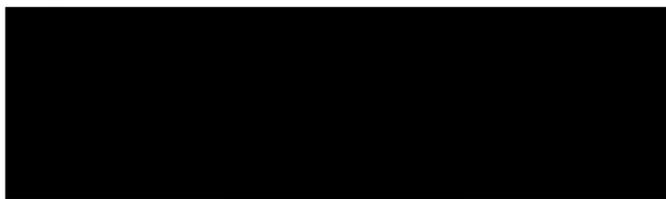




U.S. Citizenship  
and Immigration  
Services

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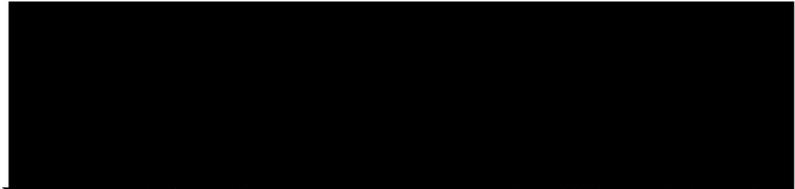


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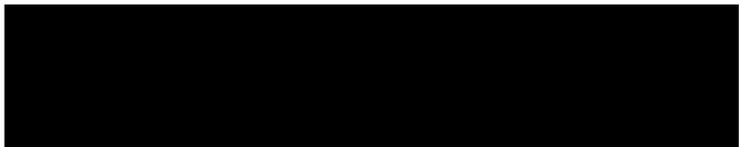
Date: JUL 11 2007

IN RE: Petitioner:



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:



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.

*Maureen Deadrick*  
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 she entered into marriage with her husband in good faith, that her husband subjected her to battery or extreme cruelty during their marriage and that she resided with her husband.

On appeal, counsel submits a brief.

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.

\* \* \*

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

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

*Evidence for a spousal self-petition –*

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

\* \* \*

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

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

\* \* \*

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences.

Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Uganda who entered the United States on December 9, 1995 as a nonimmigrant visitor (B-1). On October 27, 1997, the petitioner filed a Form I-589, Application for Asylum. The petitioner's asylum case was referred to an immigration judge and she was served with a Notice to Appear for removal proceedings. The immigration judge denied the petitioner's asylum application and granted her voluntary departure to Uganda. The Board of Immigration Appeals affirmed the immigration judge's decision and the U.S. Court of Appeals for the Tenth Circuit denied her petition for review on September 23, 2004.

On October 3, 2003, the petitioner married D-L-<sup>1</sup>, a U.S. citizen, in Washington.<sup>2</sup> D-L- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on December 5, 2003. The Form I-130 was denied on February 2, 2005.

In the interim, the petitioner filed this Form I-360 on August 26, 2004. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty and good-faith entry into the marriage. The petitioner, through counsel, responded with further documentation. On October 19, 2005, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite battery or extreme cruelty, good-faith entry into the marriage and joint residence. The petitioner, through counsel, responded to the NOID with additional evidence. The director issued a second NOID on the same grounds on February 3, 2006 and counsel submitted a letter in response. The director denied the petition on July 24, 2006 on the grounds cited in the February 3, 2006 NOID and counsel timely appealed.

On appeal, counsel claims that the petitioner met her burden of proof and that the director did not properly consider the testimony of a clinical social worker and erroneously concluded that the petitioner lacked credibility. As discussed below, counsel's claims on appeal fail to overcome the grounds for denial. Beyond the director's decision, section 204(g) of the Act further bars approval of this petition.

#### *Battery or Extreme Cruelty*

The record contains the following evidence relevant to the petitioner's claim that her husband subjected her to battery or extreme cruelty during their marriage:

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

<sup>2</sup> On the Form I-360, the petitioner states that she has been married three times. We refer to the petitioner's third husband, D-L-, as her husband.

- The petitioner's July 20, 2004 and June 30, 2005 statements submitted with the instant petition and a copy of her January 21, 2004 declaration previously submitted with her husband's Form I-130 petition;
- The August 23, 2004 and June 30, 2005 letters of [REDACTED] a licensed, clinical social worker;
- April 1, 2005 letter and June 30, 2005 affidavit of the petitioner's brother, [REDACTED];
- Letter of the petitioner's relative, [REDACTED];
- Affidavit of the petitioner's relative, [REDACTED];
- Affidavit of the petitioner's niece, [REDACTED];
- Affidavit of the petitioner's niece, [REDACTED];
- Affidavit of the petitioner's nephew, [REDACTED];
- Copy of January 20, 2004 letter from the petitioner's employer stating that the petitioner listed her husband as her emergency contact and authorized him to pick up her paycheck; and
- Copy of a residential lease renewal agreement listing the petitioner, her husband and her brother, [REDACTED] as joint tenants and dated February 29, 2004.

In her July 20, 2004 statement, the petitioner reports that her husband began acting differently in December 2003 and became progressively more abusive. The petitioner states that her husband called her derogatory names and criticized her cooking, housekeeping and personal appearance. The petitioner reports that her husband would kick and pinch her and step on her toes intentionally and once pushed her against the wall, which banged her head and caused a headache that lasted for several days. The petitioner states that her husband forced her to have sex and engage in certain sexual acts against her will. In addition, the petitioner reports that her husband threatened to call immigration authorities to get her deported, isolated her from her family and friends and physically prevented her from calling her family and friends. The petitioner also states that her husband stopped working after they were married, demanded money from her, deposited all her money in his bank account, did not allow her to spend money on her own needs, and stalked her to demand money and embarrass her in front of others. The petitioner explains that, as a result of her husband's behavior, she has lost weight, contemplated suicide and is unable to sleep without medication.

In her January 21, 2004 declaration that was submitted with her husband's Form I-130 petition filed on her behalf, the petitioner discusses her husband in positive terms and states that they have a "happy marriage." In the RFE, the director noted that the February 29, 2004 lease indicated that the petitioner and her husband lived with the petitioner's brother, a fact which contradicted the petitioner's claim that her husband isolated her from her family. The director also noted that the petitioner's January 21, 2004 declaration and her employer's letter verifying that she authorized her husband to pick up her paychecks contradicted her claim that her husband economically abused her. In her June 30, 2005 statement, the petitioner explains that her husband and brother did not interact and barely communicated. When they were both at home, the petitioner states that her brother kept to himself studying. The petitioner further explains that she wrote her declaration in January 2004 because at that time her husband still treated her lovingly on some days and that she let her husband pick up her

paychecks in January 2004 because he was unemployed and had more time than she did, but that she later did not trust him to do so. The petitioner also states, "As an African woman, I was not clear where the line was between submission to one's husband and abuse."

The petitioner's statements are not fully supported by the remaining, relevant evidence. In her August 23, 2004 letter, [REDACTED] states that she met with the petitioner for one, ninety-minute evaluation. [REDACTED] diagnoses the petitioner with severe clinical depression and post traumatic stress disorder arising from the psychological abuse of her husband. The director acknowledged [REDACTED]'s diagnosis, but determined that her assessment was based only on the petitioner's word, which the director found questionable given certain inconsistencies in the petitioner's testimony. On appeal, counsel claims that the director erroneously concluded that [REDACTED]'s diagnosis was based only on the petitioner's statements. We agree that [REDACTED]'s letters show that her diagnosis was based, not simply on the petitioner's statements, but on [REDACTED]'s clinical observations of the petitioner's behavior and affect during the evaluation and on [REDACTED]'s professional training and experience.

Nonetheless, while we do not question [REDACTED]'s expertise, we note significant discrepancies between her letters and the petitioner's testimony. First, [REDACTED] lists "serious feelings of shame" as one of three symptoms exhibited by the petitioner. [REDACTED] states, "[The petitioner] feels that she is been [sic] betrayed and feels very ashamed that a woman of her background has brought shame to her family." Although the petitioner discusses the effects of her husband's mistreatment on her self-esteem and mental and physical health, the petitioner never mentions any feelings of shame. Second, [REDACTED] describes two incidents of alleged abuse with details that are lacking in the petitioner's own testimony. [REDACTED] states that the petitioner's husband held a knife to the petitioner and threatened to slice her into pieces. In contrast, the petitioner states that her husband threatened that if she did not leave him, he would slice her to pieces, but she never indicates that her husband made this threat while holding a knife. [REDACTED] also states that the petitioner's husband once pushed and shoved the petitioner so hard that she "fell and hit her head" and "had a concussion." In contrast, the petitioner states that her husband once pushed her against the wall and she banged her head and had a headache for several days. Finally, [REDACTED] states that the petitioner has made two suicide attempts with an overdose of Tylenol. In her July 20, 2004 statement, the petitioner states that she has "contemplated suicide several times," but does not report actually attempting suicide. In her June 30, 2005 statement, the petitioner reports that she has been emotionally scarred by her husband's cruel treatment, but she does not indicate that she ever attempted suicide.

In his June 30, 2005 affidavit, the petitioner's brother, [REDACTED] states that he observed the petitioner's husband ridiculing and putting the petitioner down. [REDACTED] reports that his sister was depressed, had trouble sleeping, began to lose her hair and had to wear a wig. In addition, he reports that the petitioner once intimated that her husband's behavior made her contemplate suicide. However, [REDACTED] does not report that the petitioner ever attempted suicide, as stated by [REDACTED]. [REDACTED] also explains that he advised the petitioner not to file a Form I-360 and was reluctant to recognize the abuse due to his cultural background. [REDACTED] further states that at the end of May 2005, he heard a nasty and intimidating voicemail message that the petitioner's husband had left her.

§ letters fail to fully support the petitioner's claims, however, due to inconsistencies between his testimony and the petitioner's statements. First, in his April 1, 2005 letter, states that the petitioner's supervisor asked the petitioner if he should call the police to apprehend the petitioner's husband when he was stalking her at work. Although she states that her husband "is always stalking" her and "showing up" at her work, the petitioner never discusses her supervisor's awareness of the situation and the record contains no corroborative statement from the petitioner's supervisor. Second states that at one point the petitioner wanted to get a protection order against her husband, but stopped her from doing so because he felt it was not good to get the police involved. Yet in her July 20, 2004 statement, the petitioner states that she is "scared of getting a restraint order against him: for am [sic] scared for my life, he is a kind of man who can do anything crazy!" In her June 30, 2005 statement, the petitioner explains that she did not get a restraining order against her husband because she was worried about her immigration status and her husband's threats to get her deported. The petitioner never states that her brother's opposition prevented her from obtaining a protection or restraining order against her husband.

The affidavits from the petitioner's other relatives confirm that the petitioner stopped communicating with them during her marriage and that the petitioner's appearance and demeanor greatly changed after her marriage. The affidavits do not, however, establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. reports that the petitioner came to her house one night in April 2004 when the petitioner appeared pale, fearful and exhausted from lack of sleep and confided in about her husband's behavior. reports that the petitioner "had visible emotional scars and signs of psychological impairment," but that it was difficult to contact the petitioner and that the petitioner's husband would not let speak to the petitioner for more than a minute at a time. and simply state that the petitioner stopped visiting and communicating with them after her marriage and that when they saw her again, the petitioner's appearance had changed significantly.

The unresolved discrepancies and inconsistencies regarding significant portions of the petitioner's testimony and the corresponding descriptions of and as previously discussed, detract from the credibility of the petitioner's description of the alleged abuse. The brief statements of and alone do not establish the petitioner's claim. In sum, the relevant evidence fails to establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Faith Entry into Marriage*

The record contains the following evidence relevant to the petitioner's claim that she entered into marriage with her husband in good faith:

- The petitioner's July 20, 2004 and June 30, 2005 statements submitted with the instant petition and a copy of her January 21, 2004 declaration previously submitted with her husband's From I-

- 130 petition;
- April 1, 2005 letter and June 30, 2005 affidavit of the petitioner's brother, [REDACTED]
  - Letter of the petitioner's relative, [REDACTED]
  - Affidavit of the petitioner's relative, [REDACTED]
  - Affidavit of the petitioner's niece, [REDACTED]
  - Affidavit of the petitioner's niece, [REDACTED]
  - Affidavit of the petitioner's nephew, [REDACTED]
  - Notice dated June 2, 2005, which states that the petitioner and her husband obtained preliminary pre-marital counseling with [REDACTED]
  - Client Disclosure Statement for pre-marital counseling signed by the petitioner, her husband and [REDACTED] on August 27, 2003;
  - Copy of January 20, 2004 letter from the petitioner's employer stating that the petitioner listed her husband as her emergency contact and authorized him to pick up her paycheck;
  - Copy of the petitioner's Form W-4, Employee's Withholding Allowance Certificate, signed on December 28, 2003 and stating that she is married;
  - Copies of Embassy Suites statements dated December 27, 2002 and February 28, 2003, which list the same address for the petitioner and her husband;
  - Copies of Fairfield Inn statements dated February 28 and June 26, 2003 and jointly issued to the petitioner and her husband;
  - Copies of car rental statements dated February 28 to March 4 and June 26 to 30, 2003 that list the petitioner's husband as the renter and the petitioner as an additional driver and a statement dated October 16 to 17, 2003 listing the petitioner as the renter and her husband as an additional driver;
  - Copies of the first page of airline tickets for the petitioner and her husband for a roundtrip flight from Seattle to Denver in October for an unspecified year;
  - Copies of two cards congratulating the petitioner and her husband on their wedding; and
  - Copies of four photographs of the petitioner and her husband taken on three, unspecified occasions.

The petitioner provides no probative testimony regarding how she met her husband, their courtship, wedding, joint residence or any of their shared experiences, apart from her husband's alleged abuse, in either of her two statements submitted with this petition. However, the petitioner submitted a copy of her January 21, 2004 declaration regarding her marriage that was filed with her husband's Form I-130 petition on her behalf. In that declaration, the petitioner states that she met her husband in 2002 when she applied for a job at his workplace. The petitioner states that she was attracted to her husband's physical appearance and compassionate behavior. After she was hired, the petitioner states that she and her husband became close and began dating in late 2002. The petitioner describes in detail the couple's courtship and briefly discusses their joint residence and some of their shared experiences after their marriage.

The director determined that the petitioner's January 21, 2004 declaration regarding her happy marriage contradicted her July 20, 2004 statement in which she reports that her husband's abuse began in

December 2003. On appeal, counsel asserts that the two statements are not inconsistent and that the evidence establishes the escalating abuse of the petitioner's husband during the six months between the two statements. We agree that the petitioner's January 21 and July 20, 2004 statements are not contradictory. The petitioner explains in her June 30, 2005 statement that her husband's behavior began changing in December 2003, but that she initially made excuses for his mistreatment because she still loved him. The petitioner further states that the attorney who represented her husband (in connection with his Form I-130 petition filed on her behalf) detected the alleged abuse and advised her to file a Form I-360, but she was reluctant to do so because "[a]s an African woman, I was not clear where the line was between submission to one's husband and abuse."

Although it is not inconsistent with her later statements submitted in this case, the petitioner's January 21, 2004 statement is not sufficient to establish that she entered into her marriage in good faith. Further, the remaining, relevant evidence does not support the petitioner's claims. The petitioner's brother, [REDACTED] states that he was living with the petitioner when she met her husband. He states that he was happy for the petitioner, but he does not describe in detail any of the petitioner's behavior towards or interactions with her husband that he directly observed. To the contrary, [REDACTED] states that the petitioner's husband despised him and that he never interacted with the petitioner's husband or spent any social time with the former couple.

The petitioner's other relatives also fail to provide detailed, probative testimony regarding the petitioner's allegedly good-faith entry into the marriage. [REDACTED] states that the petitioner said that she had found a missing part in her life when she met her husband and that [REDACTED] could see that the petitioner and her husband were a "newly married couple in bliss." Yet [REDACTED] provides no further details and does not describe any particular occasions where she observed the petitioner interacting with her husband. [REDACTED] and [REDACTED] state that the former couple interacted with them prior to their marriage, but they offer no probative details.

The relevant documentary evidence also fails to establish the petitioner's good-faith entry into the marriage. The evidence shows that the petitioner and her husband underwent pre-marital counseling, but in her January 21, 2004 declaration, the petitioner states that the counseling was obtained on her husband's initiative, not her own. The Embassy Suites, Fairfield Inn, and car rental statements and the airline ticket cover pages show that the former couple traveled together on three occasions before and after their marriage, but the petitioner does not discuss these trips in any probative detail. The two wedding cards and photographs confirm that the former couple was married and were pictured together on three, unspecified occasions, but these documents alone do not establish the petitioner's good-faith entry into the marriage.

The petitioner's W-4 Form was signed on December 28, 2003 and her employer's letter is dated January 20, 2004, just two days before she and her husband were interviewed regarding his Form I-130 petition filed on her behalf. Moreover, the record shows that the petitioner's second marriage was not dissolved until July 1, 2003, over six months after she began dating her (third) husband, D-L-, and the petitioner does not state when she separated from her second husband. The record further shows that

the petitioner married D-L- less than three months after the Form I-130 petition filed by her second husband on her behalf was denied. The petitioner provides no explanation for the chronology of these events.

Although the petitioner discusses in detail how she met her husband and their courtship in her January 21, 2004 declaration, she provides no further testimony regarding their marriage, joint residence or any of their shared experiences, apart from the alleged abuse, in her July 20, 2004 and June 30, 2005 statements submitted in this case. The petitioner's relatives fail to provide probative details regarding her alleged good-faith entry into the marriage and the relevant documentary evidence also fails to establish the petitioner's claim. Accordingly, the petitioner has not demonstrated that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Section 204(g) of the Act*

Beyond the director's decision, section 204(g) of the Act further bars approval of this petition. Section 204(g) of the Act states:

*Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], 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 her husband while her petition for review of the Board of Immigration Appeals decision affirming the Immigration Judge's denial of her asylum application in removal proceedings was pending before the U.S. Court of Appeals for the Tenth Circuit. The record does not indicate that the petitioner resided outside of the United States for two years after her marriage.

The bona fide marriage exception to section 204(g) of the Act also 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), 1154(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)(9)(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 (5<sup>th</sup> Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard").

As the petitioner has failed to establish that she entered into her marriage with her husband in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has also failed to demonstrate that she 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.

*Joint Residence*

The record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- The petitioner's June 30, 2005 statement submitted with the instant petition and a copy of her January 21, 2004 declaration previously submitted with her husband's Form I-130 petition;
- April 1, 2005 letter and June 30, 2005 affidavit of the petitioner's brother, [REDACTED];
- Copy of the first page of a residential renewal lease agreement listing the petitioner and her brother, [REDACTED], as joint tenants and dated August 28, 2003 for a lease term of September 1, 2003 to February 29, 2004 and a copy of a renewal lease for the same residence listing the petitioner, her husband and her brother as joint tenants and dated February 29, 2004 for a lease term of March 1 to September 30, 2004;
- Copy of the petitioner's Form W-4, Employee's Withholding Allowance Certificate, signed on December 28, 2003;
- Copies of the Washington driver's licenses of the petitioner and her husband;
- Copies of Embassy Suites statements dated December 27, 2002 and February 28, 2003, which list the same address for the petitioner and her husband; and
- Copies of Fairfield Inn statements dated February 28 and June 26, 2003 and jointly issued to the petitioner and her husband.

On the Form I-360, the petitioner states that she resided with her husband from September 2003 until April 30, 2004 and that their last joint residence was an apartment on [REDACTED] in Renton, Washington. However, in her January 21, 2004 declaration and her June 30, 2005 statement, the petitioner reports that she and her husband did not begin living together until after their marriage on October 3, 2003. The petitioner does not explain this discrepancy on appeal.

The petitioner's brother, [REDACTED], states that he was living with the petitioner during her courtship and he indicates that he later lived with the petitioner and her husband, but [REDACTED] does not state the address and dates of their joint residence or provide any further details. The lease documents are for the [REDACTED] address listed on the Form I-360 as the former couple's last joint address, but the February 29, 2004 lease was not signed by the petitioner's husband until March 29, 2004, nearly a month after the lease term began and just one month before the petitioner states that she and her husband separated. Accordingly, the February 29, 2004 lease alone does not establish that the petitioner's husband ever actually moved in with her and her brother to the [REDACTED] residence.

In her January 21, 2004 declaration, the petitioner stated that she and her husband were living in Bellevue, Washington with her husband's daughter. The driver's license of the petitioner's husband, issued on October 13, 2001, lists his address as on [REDACTED] in Bellevue. The petitioner's

Form W-4, dated December 28, 2003, lists the same Bellevue address for the petitioner, as does the petitioner's driver's license issued on January 2, 2004. However, both documents were obtained by the petitioner less than a month before the former couple's interview regarding the Form I-130 petition filed by the petitioner's husband on her behalf. The Embassy Suites and Fairfield Inn statements list the Bellevue residence and the Renton residence, respectively, as the addresses of the petitioner and her husband. However, in her June 30, 2005 statement, the petitioner explains that when the couple checked into a hotel, they would use the address of the first person to pull out his or her identification and the petitioner reiterates, "we did not begin living together until our wedding."

On appeal, counsel states that the petitioner and her husband had two joint residences during their marriage. Counsel explains that the former couple made her husband's prior address in Bellevue as their official residence, but because her husband's apartment was low-income housing and the petitioner was considered a high-income earner, the former couple could not live together at the Bellevue residence and instead were residing at the petitioner's Renton apartment until they could purchase a home of their own. The petitioner herself does not discuss these purported facts in any of her statements and the record contains no other evidence to support counsel's explanation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

The petitioner provides no detailed statement of the dates and addresses of, or other probative information regarding, her residence with her husband. The record contains only one jointly issued document, the February 29, 2004 lease, which was signed by the petitioner's husband a month after the lease term began and a month before the petitioner states that the former couple separated. Consequently, the lease alone is insufficient to establish that the petitioner's husband actually moved in and resided with the petitioner. Moreover, the petitioner has not resolved the discrepancy between her testimony that she and her husband did not live together until their marriage in October 2003 and her statement on the Form I-360 that she and her husband began living together in September 2003. Accordingly, the petitioner has failed to establish that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The record does not demonstrate that the petitioner entered into marriage with her husband in good faith, that her husband subjected her to battery or extreme cruelty during their marriage and that she resided with her husband. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied. Section 204(g) of the Act further bars approval of this petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D.

Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.