U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 24 2009

EAC 05 005 51543

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

[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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 on the basis of his determination that the petitioner had failed to establish: (1) that he shared a joint residence with his wife; (2) that his wife subjected him to battery or extreme cruelty; and (3) that he entered into marriage with his wife in good faith.

The petitioner submitted a timely appeal on December 11, 2006.

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

> (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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

(ii) ***Relationship.*** A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .

(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 of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Jordan who entered the United States in B-2 status on September 14, 1998. He married L-G-,[1] a United States citizen, on December 4, 1998. L-G- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on December 21, 1998. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date. The Form I-130 was approved on July 20, 1999, and the Form I-485 was approved on December 14, 1999. The petitioner was granted conditional permanent resident status through December 14, 2001.

The petitioner filed Form I-751, Petition to Remove the Conditions on Residence, on September 10, 2001. L-G- withdrew her support of the petitioner's lawful permanent residence on June 7, 2002, and L-G- and the petitioner divorced on April 8, 2003. The district director of the Baltimore District Office denied the Form I-751 on November 3, 2004. In his decision, the district director noted that immigration agents had interviewed both L-G- and her boyfriend on June 7, 2002. The district director discounted the petitioner's documentation in support of a bona fide marriage, stating that it appeared as though all the supporting documentation obtained by the petitioner had been procured solely for immigration purposes. The district director found that a preponderance of the evidence of record reflected that the petitioner's marriage to L-G- was a sham marriage entered into solely for immigration purposes.

The petitioner filed the instant Form I-360 on October 4, 2004. The director issued a notice of intent to deny (NOID) the petition on June 29, 2005, which notified the petitioner of the deficiencies in the

[1] Name withheld to protect individual's identity.

record and afforded him the opportunity to submit further evidence to establish that the petitioner shared a joint residence with L-G-; that the petitioner had been subjected to battery and/or extreme cruelty by L-G-; that the petitioner is a person of good moral character; and that the petitioner entered into marriage with L-G- in good faith. The petitioner responded to the director's NOID on October 20, 2005, and submitted additional evidence.[2]

After considering the evidence of record, the director denied the petition on November 14, 2006. The director found that although the petitioner had established that he is a person of good moral character, he had failed to establish that he shared a joint residence with L-G-; that he was subjected to battery and/or extreme cruelty by L-G-; and that he entered into marriage with L-G- in good faith. On appeal, the petitioner submits additional supporting documentation.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition.

Joint Residence

The first issue on appeal is whether the petitioner has established that he shared a joint residence with L-G-. In his June 29, 2005 NOID, the director informed the petitioner that an investigation had been conducted into the validity of his marriage to L-G-, and that the results of that investigation had led to a determination that he had entered into the marriage with the sole intention of gaining immigration benefits for himself, and cited to the district director's November 3, 2004 denial of the petitioner's Form I-751. Given the prominent role that November 3, 2004 decision played in the director's denial of the instant petition,[3] the AAO finds useful a review of that decision.

In his November 3, 2004 denial of the petitioner's Form I-751, the district director stated that the petitioner's quick marriage to L-G-, just three months after his entry into the United States, was "classic of a sham marriage." The district director noted inconsistencies in the record regarding L-G-'s place of residence. The district director noted that L-G- stated, on the Form G-325A, that she lived at [redacted] Seattle, WA with the petitioner. However, the district director noted that on June 26, 2000, L-G- was arrested and, according to the police report of the incident, the individual who filed the complaint identified himself as L-G-'s boyfriend, and he told the police that he and L-G- were living together at [redacted] Seattle, WA, which was the same address that L-G- had named on the Form G-325A as having been her address from September 1995 until October 1998, at which time she moved to the [redacted] address with the petitioner. The district director noted that it did not appear as though the petitioner had ever resided at the [redacted] address with L-G-. The district director stated that, further, while public records indicated that the petitioner

[2] The record indicates that, in addition to filing a response to the director's NOID, the petitioner also filed another Form I-751. *See* LIN 05 342 00023.

[3] The AAO notes that the director provided the petitioner a copy of the November 3, 2004 decision with his June 29, 2005 NOID.

used the [redacted] address throughout the duration of the marriage, public records indicated that L-G- had used several addresses during this time.

The district director told the petitioner that he had received anonymous letters regarding the petitioner's marriage to L-G- on September 11, 2001 and March 8, 2002. Both letters reported that the petitioner had paid L-G- thousands of dollars to enter into marriage with the petitioner, and that the petitioner had procured joint bank accounts and other joint documents solely for immigration purposes.

The district director informed the petitioner that agents interviewed L-G-'s boyfriend on June 7, 2002. According to the district director, L-G-'s boyfriend told the agents that he had lived with L-G- for three years, and that he had not even been aware that L-G- was married to the petitioner until he proposed to L-G- in September 1999. L-G-'s boyfriend also told the agents that he thought someone had approached L-G- on the petitioner's behalf to get married, and that money was involved.

The district director also informed the petitioner that agents had also interviewed L-G- on June 7, 2002. L-G- executed a sworn statement before the agents withdrawing her support of the Form I-751. She told the agents that she was pregnant by another man; that she no longer lived with the petitioner; that she planned to divorce the petitioner at her earliest opportunity; that she had lived with a boyfriend during the course of her marriage to the petitioner; and that the petitioner had contacted her a few weeks previously, wished to speak about the Form I-751, and threatened her. L-G- could not remember how and when she met the petitioner; did not know how the petitioner had entered the United States; did not know how long she and the petitioner had lived together; and did not know how the petitioner supported himself since he was not working.

The district director then notified the petitioner that he received a third anonymous letter regarding the petitioner's marriage to L-G- on January 13, 2003. In conclusion, the district director stated that the clearly-documented separate residences that the petitioner and L-G- held during the course of their marriage undermined the validity of all the joint bills, joint taxes, and other documents submitted by the petitioner. The district director stated that it appeared as though the petitioner had procured all the supporting documentation over the years solely for immigration purposes, and that they did not constitute evidence of a bona fide marital union. Accordingly, the district director denied the Form I-751 on November 3, 2004. With regard to the instant Form I-360, the petitioner was provided with another copy of the district director's I-751 denial in the director's June 29, 2005 NOID.

The petitioner addressed these issues in an August 30, 2005 affidavit. With regard to the statements of the district director in his November 3, 2004 I-751 denial, the petitioner stated that he and L-G- lived at the [redacted] address at the beginning of their marriage. He states that they moved to [redacted] Seattle, WA in January 1999, and that they later moved to [redacted]; Seattle, WA. The petitioner states that, although he and L-G- were "moving around," he used the [redacted] address as his mailing address during this time. With regard to L-G-'s cohabitation with a boyfriend as of June 16, 2000, the petitioner states that L-G- was not living with her boyfriend at [redacted]; Seattle, WA, on that date. With regards to the district director's statement that L-G- had reported living at the [redacted] address on her

Form G-325A prior to her marriage to the petitioner, the petitioner points out that she had lived in Apartment 2 before the marriage (as reported on the Form G-325A), and not in Apartment 6 as reported by her boyfriend. With regard to L-G-'s June 7, 2002 interview with immigration agents, the petitioner states the following: "Why she would answer the way she did when she was interviewed by the USCIS investigator I cannot explain, but it serves as further evidence of her history of psychological/emotional problems and the abuse that I suffered from her."

The director found the petitioner's August 30, 2005 affidavit and supporting documentation insufficient to establish that he had shared a residence with L-G-, and denied the Form I-360 on November 14, 2006. With regard to whether L-G- and the petitioner shared a joint residence, the director stated that although the petitioner had indicated in his statement that he had lived at several addresses with L-G- but never changed his mailing address, that statement contradicted the evidence of record.

On appeal, the petitioner states, with regard to having never changed his mailing address, that he "is extremely naïve and misunderstood several laws regarding changing the mailing address. . . ."

The AAO agrees with the director's analysis. The petitioner had failed to overcome the derogatory evidence set forth by the district director in his November 3, 2004 denial of the petitioner's Form I-751. The petitioner's statement in the instant petition, on appeal, that he is extremely naïve is insufficient. The petitioner specifically informed USCIS that he and the petitioner were living together, at the [redacted] address, on September 10, 2001, the date he filed the Form I-751. However, as noted previously, the petitioner was living with a boyfriend on June 16, 2000. According to that boyfriend, he and L-G- lived together for three years. Further, as noted by the district director, the address at which L-G- was living on June 16, 2000—[redacted] is the same address at which L-G- lived prior to her marriage to the petitioner (according to the Form G-325A, she had lived there since 1995), which raises the question of whether she had ever, in fact, left that residence between the time she moved there in 1995 and the date of the incident report in 2000). Stating that L-G- has psychological and emotional problems does not overcome the evidence of record that indicates the petitioner and L-G- did not share a residence. Further, the petitioner points out that the Form G-325A states that L-G- lived in [redacted] at the [redacted] address before the marriage, but the 2000 incident report lists her as living in [redacted] at the [redacted] address. However, the AAO does not find the distinction convincing, as there is no indication that the petitioner ever lived in either apartment with L-G-.

The petitioner's response to the evidence of record which indicates that he lived at the [redacted] address while L-G- lived at several other addresses is that the couple was in fact living together during this time, but that he was simply using the [redacted] address as a mailing address. The AAO does not accept the petitioner's explanation. First, there is already a finding in the record that, based on an investigation conducted by the legacy Immigration and Naturalization Service, the petitioner entered into marriage with L-G- for the sole purpose of gaining immigration benefits, and that the documents submitted as evidence of a bona fide marriage were procured solely for the purpose of obtaining immigration benefits and therefore not credible. The AAO finds unconvincing the

petitioner's attempts to overcome the results of that investigation. While the AAO acknowledges voluminous documents in the file, the credibility of those documents is diminished based upon the information set forth previously. Further, many of those documents were procured after June 16, 2000, the date L-G-'s live-in boyfriend filed a domestic violence complaint against her. Nor are the affidavits from the petitioner's friends credible: for example, the affidavits that the petitioner submitted to USCIS in October 2003 state that L-G- and the petitioner lived together as husband and wife from 1998 until 2003. However, this testimony is inconsistent with L-G-'s testimony to an immigration agent on June 7, 2002 that she had lived with her boyfriend during the course of the marriage, and that she was pregnant by him. It is also inconsistent with the petitioner's later testimony, in which he states that he and L-G- separated at the end of 2001.

Also, the AAO notes that L-G-'s Form G-325A states that she moved to the [redacted] address with the petitioner in October 1998. However, the petitioner submits copies of court records pertaining to a petition for an order of protection against L-G-, filed by the father of her child. In that petition, which was filed in October 1998, the address provided for L-G- was the [redacted] address. In his August 30, 2005 affidavit, the petitioner states that the Form G-325A was incorrect, and that L-G- did not move to the [redacted] address until December 1998. The petitioner states that he "can only speculate that the person who filled out the form for [L-G-] made a mistake."

The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Simply asserting that L-G-'s assertions on the Form G-325A were a mistake does not qualify as independent and objective evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven. Further, the petitioner's statement indicates his belief that someone other than L-G- completed the Form G-325A. However, L-G- signed the Form G-325A on December 14, 1998, and reported no assistance in completing that form; the section of the form instructing applicants to provide the name of the person completing the form, if applicable, was left blank.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, any time a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine 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). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence submitted by the petitioner regarding joint residence with L-G- is not credible.

The petitioner has failed to overcome the director's denial of the petition on this ground. Accordingly, the petitioner has not established by a preponderance of the evidence that he resided with L-G-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The AAO agrees with the director's determination that the petitioner failed to establish that L-G- subjected him to battery and/or extreme cruelty. In support of his assertion that he was the victim of battery and/or extreme cruelty, the petitioner submitted two affidavits in which he stated that L-G- was emotional and argumentative as a result of alcohol abuse. He stated that he was emotionally and physically exhausted from concentrating on L-G-'s troubles, which caused him to become depressed. The petitioner also submitted documents which indicated L-G- was a neglectful parent to her daughter.

In his November 14, 2006 denial, the director stated that while the petitioner's statements regarding L-G-'s abuse of alcohol and neglect of her daughter may be true, they do not establish that he was the victim of battery and/or extreme cruelty.

On appeal, the petitioner states that the director's statement with regard to L-G-'s abuse of alcohol and her neglect of her daughter not constituting battery and/or extreme hardship is "a selective judgment." He contends that L-G-'s extramarital affair was in fact abuse, and that her "incompetence and irresponsibility showed up when she told me she was pregnant by another man." He states that he "has been through everything from abuse to cheating."

The AAO agrees with the director's conclusion that the record does not establish that the petitioner was subjected to battery and/or extreme cruelty by L-G-. While L-G-'s actions as described in the affidavits that were submitted may have been unkind and inconsiderate, they do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The affidavits submitted on behalf of the petitioner fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that L-G-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. The petitioner has failed to establish that his wife subjected him 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 director also found that the petitioner had failed to establish that he married L-G- in good faith. The AAO agrees. The AAO incorporates here its previous discussion of the district director's November 3, 2004 denial of the petitioner's Form I-751. Again, the district director entered a finding in that case that the petitioner entered into marriage with L-G- for the sole purpose of obtaining immigration benefits.

The petitioner has failed to establish that he married L-G- in good faith. The record is unclear as to how long the couple dated before moving in together: the petitioner states that L-G- moved in with him in December 1998, but L-G- reported on the Form G-325A that they began living together in October 1998. As noted previously, in her interview with USCIS agents on June 7, 2002, L-G- could not remember how, or when, she met the petitioner; did not know how the petitioner entered the United States; and did not know for how long she and the petitioner had lived together, although she did admit to having lived with a boyfriend during the course of her "marriage" to the petitioner. Given the unexplained discrepancies in the record regarding whether the petitioner and L-G- ever actually lived together, and the questionable nature of the documents submitted as evidence of a shared life together, the AAO finds that the evidence of record fails to demonstrate that the petitioner entered into marriage with L-G- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Pursuant to the preceding discussion, the AAO agrees with the director's determination that the petitioner had failed to establish that the petitioner shared a joint residence with L-G-; that the petitioner was subjected to battery and/or extreme cruelty by L-G-; and that the petitioner entered into marriage with L-G- in good faith. Beyond the decision of the director, the AAO finds that the petition may not be approved for two additional reasons: (1) the petitioner has failed to establish that he had a qualifying relationship with a United States citizen; and (2) that section 204(c) of the Act further bars approval of the petition.

Qualifying Relationship and Eligibility for Classification as an Immediate Relative

The record establishes that L-G- and the petitioner divorced on April 8, 2003. Accordingly, the petitioner is ineligible to file the instant Form I-360, as he did not have a qualifying relationship with a citizen of the United States on the date the petition was filed.

The instant petition was filed on October 4, 2004, 18 months after the marriage ended in April 2003. Section 204(a)(1)(A)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a citizen of the United States is eligible to self-petition under these provisions if he or she is an alien:

> (CC) who was a bona fide spouse of a United States citizen within the past 2 years and –
>
> (aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence . . . .
>
> (bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

> (ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. . . .

As set forth previously, the petitioner has failed to demonstrate that he suffered battery and/or extreme cruelty by L-G-. Therefore, he has also failed to demonstrate a connection between the termination of the marriage and any battery or extreme cruelty he was subjected to by L-G-. If the petitioner was divorced from L-G- at the time the petition was filed, the record then fails to establish that he had a qualifying relationship with a United States citizen on the date the petition was filed, as it fails to demonstrate a connection between the termination of the marriage and any battery or extreme cruelty he was subjected to by L-G-. The petitioner has failed to establish a qualifying relationship, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. He is, therefore, ineligible for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act. For this additional reason, the petition may not be approved.

Section 204(c) of the Act

Beyond the decision of the director, the AAO finds that section 204(c) of the Act further bars approval of this petition. Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part, the following:

> [N]o petition shall be approved if –
>
> (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws[.]

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states the following:

> *Fraudulent marriage prohibition.* Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.; Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975).

As noted previously, when he denied the petitioner's Form I-751 on November 3, 2004, the district director found that a preponderance of the evidence of record reflected that the petitioner's marriage to L-G- was a sham marriage entered into solely for immigration purposes. He discounted all of the petitioner's documentation in support of a bona fide marriage, stating that it appeared as though that supporting documentation had been procured solely for immigration purposes.

The petitioner has submitted no convincing testimony or evidence in connection with the instant petition indicating that such was not the case. The record here is clear that the petitioner married L-G- for the primary purpose of evading the immigration laws.

An independent review of the record establishes that the petitioner married L-G- for the purpose of evading the immigration laws. Section 204(c) of the Act bars the approval of this petition. For this additional reason, the petition may not be approved.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that he and his wife shared a joint residence; that his wife subjected him to battery or extreme cruelty; and that he entered into marriage with his wife in good faith. Beyond the decision of the director, the AAO finds that the petitioner has failed to establish that he had a qualifying relationship with a citizen of the United States on the date the petition was filed; or that he is eligible for classification as an immediate relative. The AAO also finds that section 204(c) of the Act bars approval of this petition. Accordingly, based on the present record, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. For all of these reasons, the AAO will not disturb the director's denial of the petition.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has

been long recognized by the federal courts. *See e.g.*, *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

ORDER: The appeal is dismissed.