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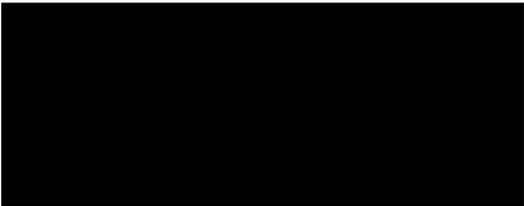
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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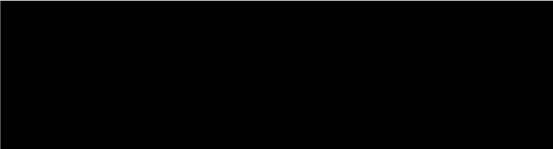
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IN RE:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider 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 revoked approval of the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. Approval of the petition is revoked.

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 lawful permanent resident of the United States.

The director revoked approval of the petition on the basis of his determination that section 204(g) of the Act bars approval of the petition.

Counsel filed a timely appeal on August 6, 2008.

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:

- (iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section . . . 204(g) . . . of the Act.

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.

Section 204(g) of the Act states the following:

*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 petitioner is a citizen of Pakistan who entered the United States in J-2 visitor status on September 1, 1989. He married Y-C,<sup>1</sup> a citizen of the United States, on July 1, 2003, while in removal proceedings. The petitioner filed the instant Form I-360 on March 25, 2005. It was approved on March 3, 2006.

Upon further review of the petition, the director issued a notice of intent to revoke (NOIR) approval of the Form I-360 on May 30, 2007. The director requested additional evidence to demonstrate that section 204(g) of the Act does not bar approval of the petition. The petitioner responded on July 27, 2007. After considering the evidence of record, the director revoked approval of the petition on July 22, 2008.

#### **Section 204(g) of the Act**

The sole issue on appeal is whether section 204(g) bars approval of this petition. Counsel and the petitioner do not dispute that the petitioner was in removal proceedings at the time of his July 1, 2003 marriage to Y-C-.

As was noted previously, section 204(g) of the Act states that 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, unless the petitioner establishes that he or she is eligible for the bona fide marriage exception at 204(g) of the Act, which is contained at section 245(e)(3).

Section 245(e) of the Act states, in pertinent part, the following:

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

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

\* \* \*

- (3) [S]ection 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, the following:

*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.

Accordingly, the issue before the AAO is whether the petitioner has proved by clear and convincing evidence that he entered into marriage with Y-C- in good faith. 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").

In his July 22, 2008 revocation, the director looked primarily to record of the nullity hearing regarding the marriage between the petitioner and Y-C-, which took place in Los Angeles County, California on March 2, 2006. The director also found that, since the evidence of record regarding

the commingling of funds indicated that such funds came primarily from Y-C-, those records were primarily evidence of her intentions upon entering into the marriage rather than the petitioner's. The director also noted inconsistencies in the petitioner's testimony with regard to how well he knew Y-C- before the marriage.

On appeal, counsel contends that the director erred in revoking approval of the petition.

In reaching its own conclusion on this matter, the AAO turns first to the court proceedings surrounding the termination of the marriage. As established by the record, Y-C- filed a petition for "nullity of marriage" with the Los Angeles Superior Court on August 30, 2004. At page 2 of the petition, she marked the boxes to indicate that she was seeking to have the marriage annulled based upon fraud, as set forth at section 2210(d) of the California Family Code.<sup>2</sup> The petitioner contested the matter, and a hearing took place on March 2, 2006. Y-C- and the petitioner both testified, and both were cross-examined by the other's attorney. On March 23, 2006 the judge granted Y-C-'s petition, entered a finding of fraud, and a judgment of nullity was entered. According to the transcript of proceedings of the March 2, 2006 hearing, which counsel submitted into the record in response to the director's NOIR, the judge concluded the following:

So it seems very clear by the entire sequence of events that [the petitioner's] primary focus, primary goal in this marriage was to obtain his immigration status. . . .

Therefore, I would find that pursuant to family code section 2210, subsection D, that [the petitioner] did not enter into the marriage with the intent to participate in a good faith marriage and I would grant the judgment for nullity.

The AAO notes that, in his July 20, 2007 response to the director's NOIR, counsel stated that the judge's decision was not supported by the record of that proceeding. The AAO, however, will not go behind the judge's decision. The petitioner presented his case to the judge, and the judge made her decision. The AAO cannot, and will not, re-litigate that matter. That the Los Angeles Superior Court annulled the marriage between the Y-C- and the petitioner on the basis of its specific finding that the petitioner "did not enter the marriage with the intent to participate in a good faith marriage" and that the petitioner's "primary goal in this marriage was to obtain his immigration status" impacts negatively on the petitioner's attempt to establish, by clear and convincing evidence, that he

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<sup>2</sup> Calif. Fam. Code § 2210(d) states, in pertinent part, the following:

A marriage is voidable and may be adjudged a nullity if any of the following conditions existed at the time of the marriage:

\* \* \*

(d) The consent of either party was obtained by fraud. . . .

entered into the marriage in good faith, and that it was not entered into for the purpose of procuring his admission as an immigrant.

In his February 10, 2005 self-affidavit, the petitioner stated, with regard to his intentions upon entering into the marriage, that Y-C-'s family visited his family's residence in 2001 in order to ask for his sister's hand in marriage to their son. At that time, they also "showed an interest" in arranging a marriage between the petitioner and Y-C-. According to the petitioner, negotiations took place between Y-C-'s family and the petitioner's mother regarding the marriage. He stated that, after two years of matrimonial negotiation, he and Y-C- married. According to the petitioner, "[b]y the time we got married, [Y-C-] and I got to know each other pretty well." The petitioner testified that he loved Y-C-, and that he believed they would be happy together. In an August 26, 2003 affidavit that the petitioner submitted in support of his Form I-360, [REDACTED] the petitioner's sister, stated her belief that the petitioner and Y-C- "got married because they know and love each other."

However, as noted by the director in his July 22, 2008 denial, the petitioner stated in the nullity hearing that he and Y-N- had no physical contact between August 2001 and the time of their marriage, and that the only contact between the two of them was "just e-mails and maybe a couple of phone conversations." The petitioner also stated that the reason he and Y-C- did not consummate their marriage initially was because they needed to get to know one another.

As noted by the director, the petitioner's claims that he and Y-C- knew each "pretty well" contradicts his testimony at the nullity hearing that the only contact the two had had was "just e-mails and maybe a couple of phone conversations," and that the reason they did not consummate their marriage until well into the marriage was that they needed time in which to get to know one another.

On appeal, counsel states that the inconsistencies in the petitioner's testimony were "not truly an inconsistency [sic] when considered in the context it was given." Counsel contends that the petitioner's statement that he and Y-C- "got to know each other pretty well" was made within the context of an arranged marriage. According to counsel, "[i]n that sense, a couple would know each other well enough perhaps, after an initial meeting and perhaps after a few more conversations on the telephone."

The AAO disagrees with counsel's analysis. The petitioner's statement that he and Y-C- had "got to know each other pretty well" was followed immediately by his statement that he was in love with her. There was no indication that when the petitioner testified to U.S. Citizenship and Immigration Services (USCIS) that he and Y-C- had gotten to know each other pretty well, and that he loved Y-C-, that their only contact had been e-mails and "maybe a couple" of phone conversations. The AAO agrees with the director's determination that the petitioner's statements were inconsistent with one another. The petitioner's inconsistent testimony undermines the credibility of his claim.

The AAO also agrees with the director's determination that the financial documentation fails to establish the petitioner's good faith entry into the marriage. As noted by the director, the petitioner stated that he did not contribute greatly to the couple's household budget, as he was supporting his mother. As such, because the household budget was primarily supported by Y-C-, such documents relate primarily to her intentions upon entering into the marriage, rather than the petitioner's.

On appeal, counsel asserts that the director's determination with regard to the financial documentation was incorrect for two reasons. First, counsel states that the director ignored the non-financial evidence of record, and points to such evidence as the testimony of the petitioner, his family members, Y-C-'s family members, and psychologists as evidence of the petitioner's good faith entry into the marriage. Counsel also points to pictures of the couple, as well as the petitioner's life insurance policy. As was noted previously, the AAO has found that the inconsistencies in the petitioner's testimony undermine the credibility of his testimony. The testimony of members of his family, and of members of Y-C-'s family, speaks to their understanding of the couple's relationship rather than that of the petitioner. The psychologists did not meet the petitioner until after the wedding had taken place, so they are unable to opine on his intentions at that point. The pictures indicate only that the petitioner and Y-C- were together on certain dates. Further, the life insurance policy, alone, does not establish, by clear and convincing evidence, that the petitioner married Y-C- in good faith.

Second, counsel asserts that the director erred in his consideration of the financial documentation because his "arrival at the conclusion that the Petitioner did not enter into the marriage in good faith because he was unable to contribute financially on an equal level with [Y-C-] is unreasonable." However, the director arrives at no such conclusion. The director simply found that this particular evidence was insufficient to establish the petitioner's claim to have entered into the marriage in good faith; he did not state that the petitioner's lack of financial resources precluded a finding of good faith entry into the marriage. The director's finding was with regard to the evidence.

The petitioner has failed to establish by clear and convincing evidence that he entered into marriage with Y-C- in good faith. As such, he has 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, the AAO agrees with the director's determination that section 204(g) of the Act bars approval of this petition. Approval of the petition, therefore, must be revoked.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed. Approval of the petition is revoked.