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



**U.S. Citizenship  
and Immigration  
Services**

B9.

FILE:

Office: VERMONT SERVICE CENTER

Date: **AUG 13 2010**

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)

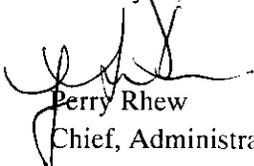
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, revoked approval of the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen or reconsider. The motion will be granted. The previous decision will be affirmed and the petition will be denied.

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 revoked approval of the petition, determining that section 204(g) of the Act bars approval of the petition. The AAO, upon review of the evidence in the record, reached its own conclusion as to whether the petitioner established by clear and convincing evidence that he entered into marriage with his former United States citizen spouse in good faith. The AAO concurred with the director's ultimate decision, finding that the petitioner had failed to demonstrate that he qualified for the bona fide marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act; and thus, approval of the petition must be revoked.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." On motion, counsel for the petitioner submits a brief and an affidavit prepared by [REDACTED] with Amnesty International USA and a Ph.D. candidate at Indiana University working on her dissertation entitled "Negotiating Identity: [REDACTED]" The evidence submitted meets the requirements of a motion to reopen. Accordingly, the AAO shall grant the motion and enter a new decision into the record.

Ms. [REDACTED], in her affidavit, indicates that she has conducted extensive research on the religious and cultural customs that influence the arrangement of marriages in South Asia and in the South Asian diaspora in the United States. Ms. [REDACTED] lists several reasons why the petitioner's arranged marriage to Y-C-<sup>1</sup> would culturally be considered bona fide and why Y-C- would seek to annul the marriage for fraud rather than terminate the marriage through divorce.<sup>2</sup> The AAO has reviewed Ms. [REDACTED] analysis in full. Counsel asserts that understanding and considering cultural customs and practices is central to the determination of the bona fide nature of the arranged marital relationship. Counsel contends that the petitioner's inconsistent testimony regarding how well he knew Y-C- prior to the marriage is not inconsistent when examining the nature and dynamics of a couple who enter into an arranged marriage.<sup>3</sup> The AAO disagrees.

<sup>1</sup> Individual's name withheld to protect identity.

<sup>2</sup> Dr. [REDACTED] opined that it was extremely unlikely that the petitioner would enter into marriage solely for immigration purposes as his marriage involved a form of marriage that involved a reciprocal exchange of spouses between two families thus connecting his marriage to that of his sister's marriage who married the petitioner's former spouse's brother. Dr. [REDACTED] further opined that the petitioner's spouse would be strongly motivated to seek an annulment of the marriage rather than a divorce because in families with strong cultural traditions, a divorce would carry a significant negative stigma and signify less future marriage prospects.

<sup>3</sup> As set out more completely in the AAO's previous decision, the petitioner stated that the couple

The AAO does not find that either counsel, Ms. [REDACTED] or the petitioner directly addresses the petitioner's intent when entering into the marriage on motion. The record continues to include unresolved, inconsistent testimony on the part of the petitioner regarding his intent in entering into the marriage. The fact that the petitioner would state to USCIS that he and Y-C- had gotten to know each other pretty well, followed by a statement that he loved Y-C- upon entering into the marriage is contradicted by the petitioner's statement that he only knew Y-C- through e-mails and a couple of phone conversations. The AAO understands the petitioner may have been subject to certain cultural restrictions, however, that does not absolve him from providing consistent and probative testimony to USCIS about his intent upon entering into this marriage. Neither counsel nor the petitioner has provided any information that resolves the petitioner's inconsistent testimony.

Moreover, upon review of Dr. [REDACTED] opinion, the AAO fails to find any pertinent and probative facts that demonstrate by clear and convincing evidence that the petitioner entered into the marriage in good faith. Dr. [REDACTED] opinion that the petitioner intended to enter into this marriage in good faith and that the marriage would have been bona fide at its inception is based upon her speculation. The record does not include any detailed facts that the petitioner based his own marriage on the marriage of his sister or that the petitioner's former spouse sought an annulment because of the negative social stigma of divorce. The record reflects that the petitioner married Y-C- while in immigration proceedings and failed to establish, by clear and convincing evidence, that he entered into the marriage in good faith. The record does not include the necessary detailed and consistent testimony to establish the petitioner's intent in entering into the marriage.

Upon review of the evidence, including the nullity decision that the petitioner submitted in response to the director's May 30, 2007 Request for Evidence, as well as the petitioner's inconsistent testimony, the AAO independently reached its decision that the petitioner had not established by clear and convincing evidence that he entered into the marriage in good faith. Although counsel disagrees with the AAO's decision, counsel fails to establish on motion that the AAO's decision was an incorrect application of the law by pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record. Upon review of the full and complete record, the AAO independently determines once again that the petitioner has not established by clear and convincing evidence that he entered into the marriage in good faith. As such, the petitioner has failed to demonstrate that he qualifies for the bona fide marriage exemption under the heightened standard of proof requested by section 245(e)(3) of the Act. Accordingly, the AAO's previous decision that section 204(g) of the Act bars approval of this petition is affirmed and the petition is therefore revoked.

**ORDER:** The May 15, 2009 decision of the AAO is affirmed. The approval of the petition is revoked.

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failed to consummate the marriage immediately after the marriage because the couple still needed to get to know each other and that their only contact had been e-mails and a couple of phone conversations; but also stated to USCIS that he and Y-C- had gotten to know each other pretty well, and that he loved Y-C- when he entered into the marriage. The director and the AAO upon review found these two iterations of the petitioner's relationship inconsistent.