

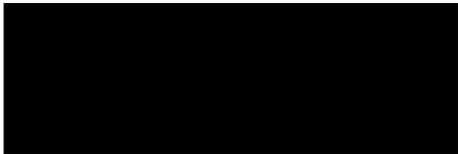
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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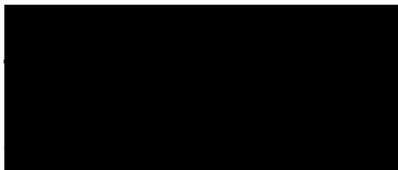
Office: VERMONT SERVICE CENTER

Date: **AUG 19 2010**

IN RE: Petitioner: [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:



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, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("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.

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).

On September 23, 2009, the director denied the petition, determining that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by her United States citizen spouse or that she had established that she had entered into the marriage in good faith. The director also found that the petitioner was subject to section 204(g) of the Act.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a brief on appeal.

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

(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 explained 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.

* * *

(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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Colombia. She entered the United States on or about August 16, 2003 with her parent as a B-2 visitor for pleasure. She remained in the United States beyond her authorized stay which ended in February 2004. She was referred to an immigration judge on May 5, 2006 when her asylum claim¹ was not granted. On July 23, 2007, the petitioner married C-R-², the claimed abusive United States citizen spouse. On September 22, 2008, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated on the Form I-360 that she had resided with C-R- from July 2007 to June 2008.

Abuse

In support of the petition, the petitioner submitted her July 30, 2008 personal statement. The petitioner declared: that once she and C-M- married, C-M- pressured her to give up her education and for the couple to stay in the same city;³ that he was afraid she would see other men when she was away at school; that she and C-M- argued about her attending school and that he would get angry and then apologize and this happened again and again; that in October, when she refused to quit school, he threatened to leave and take back his immigration application;⁴ and that he never struck or choked her but that his anger grew worse the more he was frustrated. The petitioner noted that after six months or so she offered to go to therapy but C-M- refused, at which time she realized that C-M- had no intention of giving up or fighting his jealousy. The petitioner indicated: that C-M- would check her cell phone; that he would interrogate her about what she did at school; that he was always mad and believed that she was fooling around; and that she believed he watched her, that he would visit her at school when he had a day off, but that in May 2008 he visited her school twice without telling her. The petitioner stated that on "several occasions he made threats like 'Let's see if your school friends can keep you from being deported'." The petitioner declared that in June 2008 she and C-M- had a big argument and that he made a move to strike her and she left the apartment and went to her parents. The petitioner noted that when he called her she told him that she did not care about his threats but to stay away or she would call the police. The petitioner concluded that she is happy she no longer has to bear C-M-'s possessiveness.

¹ The petitioner was added to her father's asylum claim as a dependent after she entered the United States. A final order by the Board of Immigration Appeals was issued in September 2008 and a warrant was issued for the petitioner's Removal/Deportation on September 29, 2008.

² Name withheld to protect the individual's identity.

³ The petitioner noted that she attended college in Boca Raton, Florida and that C-M- lived in Naples, Florida, a two and a half hour drive away.

⁴ C-M- filed a Form I-130, Petition for Alien Relative on behalf of the petition on July 30, 2007. The Form I-130 was denied on February 12, 2010 for failure to appear for a scheduled interview.

The petitioner also provided C-M-'s July 30, 2008 affidavit, which he wrote in support of the petitioner's I-360 Petition. C-M- declared: that it bothered him a lot that the petitioner attended college classes on the East Coast while he lived in Naples, Florida; that the marriage did not work out because of the time spent apart and his jealousy; that he realized over time that his jealousy was excessive; and that although he did not care to give the details regarding his jealousy, he agreed with what the petitioner said in her personal statement, and that while his behavior was not intended to harm it was excessive and caused harm to the petitioner.

In response to the director's request for further evidence (RFE), counsel for the petitioner submitted an August 24, 2009 letter prepared by [REDACTED], a licensed social worker and psychotherapist. [REDACTED] noted that she met with the petitioner on August 8 and August 15, 2009. Although [REDACTED] does not indicate that she interviewed or met with C-M-, she noted her belief that C-M- understood that the petitioner would be pursuing a college degree out of town and understood that the petitioner would have to obtain work to pay for the tuition. [REDACTED] indicated that "[f]rom the beginning, [C-M-] was extremely jealous and browbeat his wife, accusing her of having interests in other men." [REDACTED] also noted that when the petitioner took a job as a residential assistant which required her to sleep at the school more frequently than previously, C-M- did not visit and stay over with his wife and that the petitioner became more and more fearful of C-M-'s stalking-like behavior causing her to become distracted and lose self-confidence. [REDACTED] also indicated: that although the petitioner pleaded with her husband to try marital counseling, he refused; that he became more and more verbally abusive and the petitioner began to experience migraines and insomnia; that with her health at risk and the knowledge that her husband was indifferent to the effect of his actions on her, the petitioner began to fear that the marriage was irreparably broken which was confirmed when her husband brought up the likelihood of divorce; that "since that time" the petitioner has had no contact from her husband although she attempted to communicate with him and that "[i]n effect, [C-M-] has abandoned [the petitioner] and their marriage." [REDACTED] opined: that the petitioner is heartbroken and remains fearful of unexpected retaliation from her husband; that she has been traumatized by C-M-; that she has been the victim of C-M-'s verbal abuse and actions; and that it would be impossible for her to return to Colombia as the risk to her life is extremely high. Ms. Gordon also noted that the petitioner had decided to continue her treatment with her.

Counsel also submitted an August 28, 2009 affidavit signed by [REDACTED]. [REDACTED] declared: that it seemed that after the petitioner left for her third semester at college in January 2008, C-M- started pressuring the petitioner to quit the university and live in Naples; that on one occasion when the petitioner came back to Naples to visit, the petitioner spent the night with her because the petitioner and C-M- had a huge fight; and that later in the semester it seemed to get much worse as C-M- was becoming jealous and possessive. [REDACTED] acknowledged that she did not witness other incidents in Naples but knew that some of the couple's fights were serious and that C-M- made "threats about status and physical threats." [REDACTED] further acknowledged that she did not know what happened at the university but knew that C-M- spied on the petitioner at school many times and began to call her all the time after April 2008. [REDACTED] noted: that when she and the petitioner went out together, [in Naples] C-M- would constantly call the petitioner to check up on her and also started calling her; that the petitioner withdrew from all her friends to avoid the endless phone calls

and screaming from C-M-; and that the petitioner went from happy and confident to withdrawn, isolated and very scared.

Counsel further submitted an August 25, 2009 affidavit signed by [REDACTED] a supervisor of residential advisors at the university. [REDACTED] declared: that after January of 2008 things started going awry and that the petitioner began to receive a lot of cell phone calls and appeared distracted; that after April 2008, the petitioner began to show signs of nervous strain; and that in May 2008, the petitioner indicated to him that she might have to quit school because of her husband as he was jealous about her being away from home.

Counsel also submitted a August 25, 2009 affidavit signed by [REDACTED] who declared: that she knew the petitioner as they both attended the same university; that in the spring semester of 2008 she noticed that the petitioner seemed tired, concerned, and unable to focus on her academics; that the petitioner considered withdrawing from her classes because of the problems with her husband about her attending classes away from home; that in May of 2008 the petitioner saw her husband on campus, confronted him, and told the affiant to go on to class without her; that the affiant hired a male tutor for a difficult class but that the petitioner did not because her husband was extremely jealous and angry; and that she noticed that the petitioner received many cell phone calls that seemed to upset her. [REDACTED] also noted that it was unfair that the petitioner's husband would not drive to Boca Raton but that the petitioner had to drive to Naples even though sometimes her husband was too busy working for her to see him.

On September 23, 2009, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty. The director found that the petitioner's statement focused on the jealousy of C-M- and that C-M- in his affidavit concurred with the petitioner. The director noted the other affidavits submitted and found that the affidavits also focused on C-M-'s extreme jealousy. The director noted further that [REDACTED] in her affidavit described C-M-'s abandonment of the marriage. The director found that jealousy and abandonment are not considered extreme cruelty for immigration purposes and concluded that the petitioner was a victim of marital discord but that the relationship as described did not constitute extreme mental cruelty as envisioned by Congress.

On appeal, counsel for the petitioner asserts that the director's conclusion that C-M- was just jealous and did not engage in acts which fit the regulations is patently erroneous and contradicted by the affidavits from the parties themselves and persons who witnessed the events. Counsel asserts that witnesses have sworn that C-M- engaged in stalking behaviors, invaded the petitioner's privacy, violated his promises, sought to control the petitioner to the extent of altering her life, and engaged in threats. Counsel contends that to ignore these behaviors is to ignore the elements of extreme cruelty set out in the instructions provided by United States Citizenship and Immigration Services (USCIS).

Upon review of the information in the record, including the petitioner's statement, the affidavits of witnesses, and the evaluation provided by [REDACTED] the AAO finds there is insufficient evidence to establish that the petitioner has been subjected to battery or extreme cruelty by her United States citizen spouse.

The AAO observes that the petitioner does not provide probative detail of any incident that constitutes battery but rather as the director observed, her claim is based on C-M-'s jealousy and eventual abandonment. The behavior of the petitioner's spouse does not constitute extreme cruelty as set out in the regulation. The petitioner in this matter was able to continue her education and live at the school two and one-half hours from the claimed marital home. In addition, she had use of her cell phone and was able to visit her parents and friends. The AAO acknowledges the petitioner's claim that C-M- visited her school on two occasions without telling her; however, the petitioner does not provide probative information showing that C-M-'s behavior was aimed at controlling her. Further, although the petitioner indicates that C-M- threatened to withdraw the immigration papers he had filed on her behalf his threats were not accompanied by violence or threats of physical or mental injury. As noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." In this matter, the petitioner has failed to establish that C-M-'s actions are comparable to 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. Moreover, the AAO does not find that the petitioner has demonstrated that she was the victim of any act or threatened act of physical violence or extreme cruelty or that C-M-'s non-physical behavior was accompanied by any coercive actions or threats of harm or that his actions were aimed at insuring dominance or control over the petitioner. The record is simply insufficient in this regard.

The AAO has reviewed the statements submitted by the petitioner's friends and a co-worker. The AAO observes that the affiants do not claim that they have witnessed particular events or incidents of abusive behavior as set out in the statute and regulation; rather they speak generally of their concern for the petitioner and the general jealousy of her husband. The affiants provide general information regarding are not probative in establishing that the petitioner was subjected to extreme cruelty as set out in the statute and regulation.

The AAO has also reviewed [REDACTED] August 24, 2009 letter in which she noted the petitioner's version of C-M-'s behavior. [REDACTED] concluded that C-M- was extremely jealous and browbeat the petitioner, accusing her of having interests in other men and that the petitioner became more and more fearful of C-M-'s stalking-like behavior and that C-M- was verbally abusive. [REDACTED] found that the petitioner is heartbroken, has been traumatized by C-M-, remains fearful of unexpected retaliation from her husband, and has been the victim of C-M-'s verbal abuse and actions. The AAO observes that [REDACTED] does not offer a medical diagnosis of the petitioner's mental condition. Noting the petitioner's statements of the claimed abusive behavior of her husband and providing a general conclusion regarding the petitioner's feelings are insufficient to establish the causal connection of abusive behavior that constitutes extreme cruelty as described in the statute and regulation to the petitioner's mental condition. In this matter, while we do not question [REDACTED] professional training and experience, her letter does not provide examples of the causal relationship of specific abuse that is consistently detailed to any diagnosis of the petitioner's mental health.

When evaluating the record as a whole, the AAO finds the record lacks information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The record includes general information regarding the petitioner's difficulties with her husband as related to his jealous behavior. In this instance, the petitioner has not provided evidence that his behavior included incidents of abuse as set out in the statute and regulation. The AAO is aware of the difficulties of obtaining information to establish eligibility for this benefit; however, the petitioner must provide credible evidence that she has been subjected to battery or extreme cruelty perpetrated by her spouse in order to meet her burden of proof. In this matter, she has failed to do so. The petitioner in this matter has not provided sufficient probative evidence to establish that she was subjected to battery or extreme cruelty perpetrated by her spouse.

Good Faith

Regarding the issue of the petitioner's good faith in entering into the marriage, the AAO observes that the key factor in this determination is whether the petitioner intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter, the petitioner in her personal statement provided a general overview of meeting C-M- in 2006 when he was a manager of a store in a mall. The petitioner noted that she dated C-M- for a year and he urged her to get engaged to prove her commitment to him, as she was attending school away from him. The petitioner noted that she was happy to date but that C-M- wanted to move faster than she did. The petitioner indicated that although her parents were concerned and reluctant as they wanted her to finish school, they finally approved and she married C-M- on July 23, 2007. The remainder of the petitioner's statement focuses on the claim of abuse. C-M- indicated in his affidavit that the marriage was valid when it was entered into, that they had known each other for years, and came to love each other over time.

The record includes a Wachovia bank statement for the period of November 21, 2007 to December 19, 2007 addressed to the petitioner and C-M- at a Naples, Florida address. The statement does not show any transactions but shows a balance of \$100.03 in savings and \$299.06 in checking. Counsel references the affidavits of [REDACTED] as further evidence that the petitioner's marriage was valid. [REDACTED] stated: that she introduced the couple to each other; that it was obvious to everyone that they liked each other; that the petitioner's parents adored C-M-; that they used to go out together when the petitioner came to visit C-M- over weekends from her school; and that she was always invited for dinners. [REDACTED] stated: that she met the petitioner at school when she was already married; that she seemed happy and loving at the beginning of her marriage; that although the petitioner did not go home to Naples often, she and C-M- talked on the phone every day; and that in the spring of 2008 the petitioner began to act differently. Ms. Gordon declared: that from the beginning, C-M- was extremely jealous and browbeat his wife; that the petitioner pleaded with her husband to try marital counseling; that when C-M- brought up the likelihood of divorce, the petitioner knew her marriage was irreparably broken; and that she was heartbroken by the turn of events.

Upon review of the information in the record, the AAO concurs with the director's determination that the petitioner failed to provide sufficient testimony or evidence that she entered into the marriage in good faith. The petitioner does not describe in detail her interactions with C-M- prior to the marriage or after the marriage, other than as it related to C-M-'s abandonment and claimed abuse. The petitioner's testimony does not describe where the couple went, what the couple did, when the petitioner began staying at the claimed marital home, or the nature of the marital home. The AAO has also reviewed the general affidavits signed by [REDACTED] but does not find any probative testimony that they witnessed the bona fides of the petitioner's marriage. Stating generally, that the couple liked each other, that they went to movies, and that they made dinners does not provide the kind of probative detail that assists in establishing that the petitioner entered into the marriage in good faith. The AAO has also reviewed the affidavit of C-M-, who states that the marriage was valid when it was entered into and that they had come to love each other; however this statement does not provide specific information regarding the relationship and more importantly does not assist in establishing the petitioner's intent in entering into the marriage.

The AAO has reviewed the December 2007 Wachovia bank statement but this statement does not show that the couple used the joint account. The AAO finds that while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf fail to support a finding that she entered into this marriage in good faith. It is the generality and lack of detail included in the petitioner's statements and the statements submitted on her behalf that fail to establish the bona fides of the marriage. The AAO finds the information in the record insufficient to demonstrate that the couple commingled assets and that the couple intended to establish a life together. [REDACTED] observation that everyone knew they liked each other and [REDACTED] observation generally that the petitioner seemed happy at the beginning of the marriage are not observations that provide the probative details necessary to assist in establishing the petitioner's purported good faith in marrying her husband.

There is insufficient information in the record that contributes to an understanding of the dynamics of the initial relationship and the marriage and is demonstrative of the petitioner's good faith in entering into the marriage. Accordingly, the AAO finds that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

As the director determined, 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 matter shows that the petitioner married her husband after being placed in removal proceedings before an Immigration Judge. The record does not indicate that the petitioner resided outside of the United States for two years after her marriage.

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

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

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

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

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

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of*

Arthur, 20 I&N Dec. 475, 478 (BIA 1992). To demonstrate eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the petitioner must establish his or her good faith entry into the qualifying relationship by a preponderance of the evidence and any relevant, credible evidence shall be considered. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. §§ 1154(a)(1)(A)(iii)(I)(aa), 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 (5th 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.

Beyond the decision of the director, the petitioner has also failed to establish that she resided with C-M-. While the AAO acknowledges that the petitioner attended school and lived on the school campus as a resident advisor for some period of time, the petitioner has not provided the necessary evidence that she actually resided with C-M- on weekends or at any point in their marriage. The petitioner's general statements and the general affidavits on behalf of the petitioner do not include probative details about the marital home during the time period the petitioner resided there, a description of the apartment or house or its location, the couple's shared belongings, or any other information which demonstrated the couples' joint residence.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.. As always, the burden of proof in visa petition proceedings 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.