

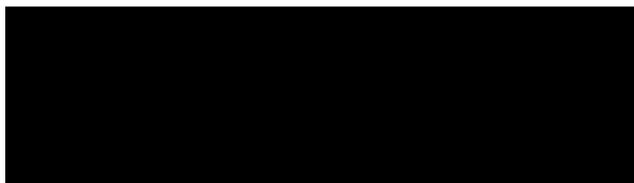
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



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



Bq

FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 20 2010**

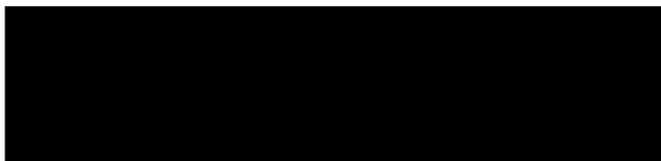
IN RE:

Petitioner:



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,

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.

On January 19, 2010, the director denied the petition, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion. Counsel checked the box on the Form I-290B indicating that she would supplement the record with a brief and/or additional evidence within 30 days. To date, the record has not been so supplemented. The record is considered complete.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

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

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention,

which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

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

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further 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.

* * *

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

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

forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ecuador. He entered the United States on or about June 7, 2005 without inspection. On April 9, 2008, the petitioner was placed in proceedings under one of his aliases. On June 9, 2008, the petitioner married [REDACTED]¹, the claimed abusive United States citizen spouse. On July 17, 2008, [REDACTED] filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On October 8, 2008, the petitioner was granted voluntary departure. On February 3, 2009, an Immigration Judge granted a motion to reopen the petitioner's immigration proceedings and on March 4, 2009 terminated the petitioner's immigration proceedings for the adjudication of the pending Form I-130 and the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that had been filed on January 12, 2009.

Abuse

In support of the Form I-360 petition, the petitioner submitted a January 8, 2009 personal statement. The petitioner stated that after he got married, [REDACTED] "became extremely controlling and abusive," lost her temper regularly, screamed at him often which would end by throwing him out of the house. The petitioner noted that as [REDACTED] was pregnant he tried to be patient. The petitioner indicated that as he was not able to bring in as much money due to the recession in the construction industry, [REDACTED] would threaten that she would go back to the children's² father if he could not provide for them and that he found this threat "psychologically torturing." The petitioner noted that [REDACTED] accused him of having an affair. The petitioner declared that on one occasion, [REDACTED] verbally abused him and hit him and later when she felt sick, he took her to the hospital and made no reference to how she had treated him during the day. The petitioner indicated that by mid-October, [REDACTED] began to attack him physically on a regular basis, and on one occasion she began to hit and kick him and when he tried to

¹ Name withheld to protect the individual's identity.

² The petitioner noted that [REDACTED] had two children from a prior relationship and that she sometimes claimed that he was not the father of the child she was carrying when they married.

hold her to calm her down she bit him and told him to let go of her and he left the house. The petitioner noted that a few days later [REDACTED] lost her temper once again and attacked him physically. The petitioner indicated that on or about November 2008, [REDACTED] became extremely emotionally abusive and during one of her outages, she attacked and scratched him and bit him a few times drawing blood and at that time claimed that the baby she was carrying was not his. The petitioner declared that for the next few days he was on an emotional rollercoaster as [REDACTED] would tell him the baby was his and then say that it was not. The petitioner noted that at the time he was leaving for Ecuador (due to the court grant of voluntary departure), [REDACTED] told him that she was withdrawing the I-130 petition and he would never see the baby. The petitioner noted that [REDACTED] threw him out of the house again during one of her temper tantrums and he left the home a few days before Thanksgiving. The petitioner indicated that he returned to the home on Thanksgiving to be with [REDACTED] and the children despite all she had done to him. The petitioner noted that he wanted to remain in the United States until the baby was born³ and so that he could pursue a paternity test as he believed strongly that the baby is his child.

In response to the director's request for further evidence (RFE) the petitioner submitted a November 1, 2009 letter prepared by clinical psychologist, [REDACTED] Ph.D. Dr. [REDACTED] noted that he interviewed the petitioner on September 10, 2009 for approximately three hours. Dr. [REDACTED] noted that six months into their "union," the relationship began to present the petitioner with challenges as [REDACTED] began to progressively and increasingly engage in a pattern of mistreatment characterized by verbal and emotional abuse, threats of aggression, and need to control the petitioner's behavior. Dr. [REDACTED] noted that the petitioner reported: that [REDACTED] prohibited him from having his friends visit him at their apartment, receive phone calls from friends, or leave the house other than for work; that she did not allow him to play volleyball with his friends because she believed his friends would introduce him to other women; that when he left the house she would call him incessantly; that she would offer him sex in order to prevent him from going to work or out with his friends; that on one occasion [REDACTED] became so insistent that he come home from his volleyball game that he left the game and went home only to find himself thrown out of the house; that one night he came home late after visiting with friends and [REDACTED] refused to let him in the apartment but called the police and reported that he was a prowler; and that on one occasion when [REDACTED] was driving home from the mall, she became angry, stopped the car in the middle of the highway and told him to get out.

Dr. [REDACTED] noted further that the petitioner reported: that [REDACTED] called him derogatory names and threatened him; that when the petitioner first learned of [REDACTED]'s pregnancy she told him the baby was his but later denied it and the encounter ended with [REDACTED] biting the petitioner and threatening to call immigration and have the petitioner deported so that he would never see the child; and that in November 2008, the petitioner felt he needed to bring the relationship to an end as [REDACTED] bit him and tried to hit him. Dr. [REDACTED] reported that to date, (September 10, 2009 or November 1, 2009) [REDACTED] has not allowed the petitioner to see the child or establish the paternity of the child. Dr. [REDACTED] found that

³ The record shows that the child was born on January 12, 2009; the record, however, does not include a copy of the child's birth certificate or evidence of paternity testing establishing the petitioner as the child's biological father.

as a result of the experience that the petitioner reported, the petitioner had endured significant psychological harm and that in his opinion the petitioner “will suffer additional harm if his application for residency is not accepted and he is deported due to lack of spousal support and abandonment.” Dr. [REDACTED] diagnosed the petitioner with major depressive disorder, moderate, and found the following psychosocial stressors: fear that request for residency is denied, fear of deportation, spousal abuse, possible marital infidelity, parental alienation, and spousal abandonment.

On appeal, the petitioner asserts that he has provided consistent information regarding his claim. The petitioner notes, for example, that although his wife would tell him that he was prohibited from going out with his friends, he knew she was being irrational so would go out with his friends anyway. The petitioner asserts that [REDACTED] wanted to socially isolate him, which was especially cruel since she hit him and screamed at him so much. The petitioner contends that [REDACTED] was not only physically and verbally abusive she was also emotionally abusive by denying that he was the father of the child she was carrying. The petitioner points out that the director failed to reference his statements that [REDACTED] would often bite and scratch him until he was bleeding. The petitioner notes that [REDACTED] continues to make him suffer as when he visits the baby he never knows what scene he will experience.

Upon review of the record, the AAO concurs with the director’s ultimate determination on this issue. Neither the petitioner’s initial statement nor his statement submitted on appeal provides the detailed and probative evidence that establishes eligibility for this benefit. The petitioner has provided general testimony of arguments between the couple regarding the petitioner’s desire to socialize with his friends and [REDACTED]’s reluctance for him to do so. However without significant detail regarding the alleged incidents of [REDACTED] scratching and biting the petitioner, the AAO is unable to conclude that the incidents constituted battery perpetrated by [REDACTED]. The petitioner’s testimony is too vague to conclude otherwise.

The AAO also finds that the petitioner has not established that [REDACTED] subjected him to extreme cruelty. The AAO notes again that the petitioner has provided general statements regarding [REDACTED]’s demands that he stay with her after work, that she used derogatory language, that she screamed at him, threatened that she would leave him if he did not provide for her and her children, accused him of having an affair, and threw him out of the house on one or more occasions. These allegations are not detailed and do not relate specific incidents of abuse. For example, the petitioner does not describe specific instances of his spouse’s threats regarding immigration, especially when the petitioner was already in immigration proceedings. His statements are general and do not provide a consistent overview of the marital relationship. 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 [REDACTED]’s actions 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 AAO does not find that the petitioner’s statements demonstrate that he was the victim of any act or

threatened act of physical violence or extreme cruelty or that [REDACTED]'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 record is simply insufficient in this regard.

The AAO has also reviewed Dr. [REDACTED]'s evaluation of the petitioner. Upon review of the petitioner's statements to Dr. [REDACTED] the AAO observes that the petitioner in his statements to Dr. [REDACTED] does not provide a timeline of any of the alleged incidents of claimed battery other than generally in November 2008, does not describe the circumstances of these events in detail, and does not indicate if any of the claimed incidents resulted in injury requiring medical attention. The AAO observes that Dr. [REDACTED]'s findings were based upon a single interview with the petitioner and, as such, they fail to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering his findings speculative and diminishing the value of his evaluation. Moreover, listing a number of behaviors without detail surrounding the interactions is insufficient to establish that the behaviors constitute battery or extreme cruelty. In this matter, while we do not question Dr. [REDACTED]'s professional training and experience, his report does not provide examples of the causal relationship of specific abuse that is consistently detailed to his diagnosis of the petitioner's major depressive disorder, moderate. The AAO further finds that Dr. [REDACTED] has not detailed the underlying trauma or causative factors that support a finding that the petitioner presented with symptoms of an abused spouse.

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 generic information with little chronological information regarding the generally described incidents of the claimed abuse. The AAO is aware of the difficulties of obtaining information to establish eligibility for this benefit; however, the petitioner must provide credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. In this matter, he has failed to do so. The petitioner in this matter has not provided sufficient probative evidence to establish that he was subjected to battery or extreme cruelty perpetrated by his former spouse.

Good Faith Entry into Marriage

Beyond the decision of the director, the AAO finds that the petitioner has also failed to establish that he entered into the marriage in good faith. The AAO has reviewed the petitioner's statements and finds that the petitioner failed to provide probative testimony regarding his intent when entering into marriage with [REDACTED]. In the petitioner's January 8, 2009 statement, the petitioner indicated: that he first met [REDACTED] in or around September 2005 through his friend, [REDACTED]'s brother; that she was pregnant at the time so he assumed she was married or involved with someone; that in spending time with his friend and his family at Christmas and New Year's, he learned that [REDACTED] was not involved in a relationship; that [REDACTED] told him that the father of the baby had abandoned her; and that he and [REDACTED] began to date sometime in 2006. The petitioner further indicated that in the summer of 2007 he and [REDACTED] and her two children began to live together on the second floor of a house owned by [REDACTED]'s father. He noted that [REDACTED]'s sister and her husband lived on the first floor. The petitioner stated that

the couple got along very well and that [REDACTED] was very supportive when he was picked up by immigration and detained for 27 days. The petitioner indicated that he and [REDACTED] shared a passion for dancing and often attended family parties where they could take the children and also dance. The petitioner indicated that he did not want to get married as he was here illegally but that they decided to get married when [REDACTED] became pregnant in May 2008. The couple married June 9, 2008.

In the petitioner's January 22, 2009 testimony in support of a motion to reopen his immigration proceedings, the petitioner indicated that he moved in with [REDACTED] in June 2007; that he and [REDACTED] became engaged in 2008 but their plans were interrupted when he was detained by immigration for 27 days in April 2008; that in May 2008 [REDACTED] told him she was pregnant and they decided to marry right away.

In addition to the petitioner's testimony, the petitioner submitted bank statements for the periods ending November 25, 2008 and December 29, 2008 addressed to the petitioner and [REDACTED] at an address on Broadway, as well as a November 18, 2008 letter addressed to the couple at the Broadway address showing that the account was opened February 13, 2006. The petitioner also included an ultrasound picture of [REDACTED]'s baby dated September 8, 2008 and photocopies of two pictures of the couple. The record also included: T-Mobile statements for charges due in December 2008 addressed to the petitioner in care of [REDACTED] and for charges due in November 2008 addressed solely to the petitioner with both statements using the Broadway address; and an undated letter from Capital One addressed to the petitioner at the Broadway address with a reply due by March 26, 2008.

The petitioner's statements do not provide any specific probative information regarding his intent in entering into the marriage. A finding of good faith involves an exploration of the dynamics of the relationship leading up to the marriage, to determine if this was a marriage of two people intending to share a life together. For immigration purposes, evidence of good faith should demonstrate the emotional ties, commingling of resources, and shared financial responsibilities often associated with a bona fide marriage. In this matter, the petitioner provided a cursory description of his introduction and interactions with his spouse prior to the marriage and during the marriage, other than as his interactions related to the alleged abuse. The petitioner's remaining, relevant testimony is general and insufficient to establish that he entered into the marriage in good faith.

The AAO has reviewed the bills and bank statements submitted in support of the petition. The AAO observes the bills are for charges due in November and December 2008 and that the petitioner and [REDACTED] separated in November 2008. The bank statements are also for periods ending in November and December and the bank letter indicating that the account was opened on February 13, 2006, indicates a time more than a year prior to the petitioner's statement that the couple moved in together in the summer of or June 2007. The AAO has also reviewed the ultrasound of [REDACTED]'s baby and the photocopy of photographs. The photographs show that the petitioner and [REDACTED] were together on one occasion. The ultrasound provides no probative information regarding the petitioner. The documentary evidence submitted does not include sufficient indicia to establish the requisite good faith entry into the marriage. The documents submitted as referenced above, are insufficient to establish that the petitioner intended to establish a life with [REDACTED]. While the lack of documentary

evidence is not necessarily disqualifying, the petitioner's testimonial evidence also fails to support a finding that he entered into the marriage in good faith. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Also beyond the decision of the director, the AAO finds that 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 his wife 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 his 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 he entered into his marriage with his wife in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, he has also 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, section 204(g) of the Act requires the denial of this petition.

Residence

Beyond the decision of the director further, the AAO finds that the documents submitted to establish the petitioner’s joint residence with [REDACTED] during marriage are insufficient for the same reasons discussed above in the good faith section of this decision. Moreover, upon review of the petitioner’s statements, the AAO does not find that the petitioner provided a probative description of the apartment apparently carved out of the house on Broadway, of the couple’s shared belongings, or of any other information which would support a conclusion that the couple actually resided together.

The record does not include sufficient probative information to establish a 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.