

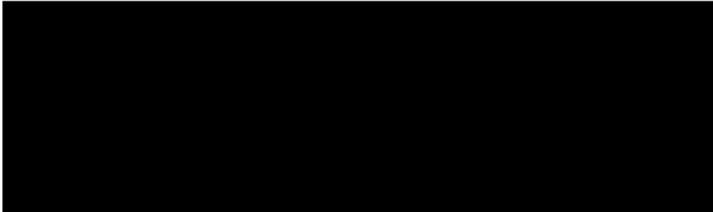
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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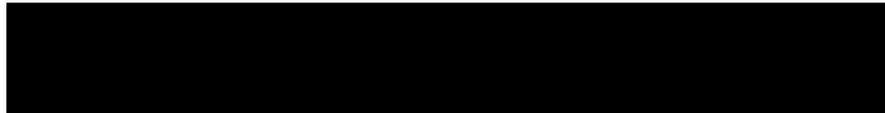


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Date: FEB 08 2011

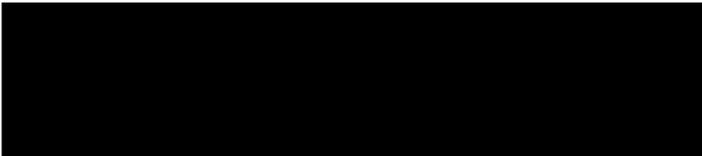
IN RE:

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 \$630. 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains 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 her United States citizen spouse.

The director denied the petition after determining that the petitioner; was not subjected to battery or extreme cruelty by her spouse; was not a person of good moral character; and did not enter into her marriage in good faith. The director further concluded that the petitioner failed to request a bona fide marriage exception pursuant to section 204(g) of the Act.

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 based on his or her relationship to the abusive spouse, 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 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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 the Republic of Albania. The petitioner entered the United States on or about July 20, 2004 under the visa waiver program using an Italian passport with a different identity. On July 29, 2005, the petitioner filed a Form I-589, Application for Asylum and

for Withholding of Removal. Asylum was not granted and the petitioner's application was referred to the Immigration Judge on March 7, 2006. The petitioner requested asylum from the Immigration Judge on March 15, 2007. While in immigration proceedings, the petitioner married C-N¹, the claimed abusive United States citizen spouse. On May 2, 2007, the Immigration Judge denied the petitioner's Form I-589. On May 21, 2007, the Miami Field Office Director ordered the petitioner removed. A Form I-130, Petition for Alien Relative, filed on behalf of the petitioner was approved on June 29, 2007. On June 4, 2008, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that she resided with C-N- from April 2007 to February 2008. The director issued a request for evidence (RFE) on October 20, 2009 and upon consideration of the evidence in the record, including the response to the RFE, denied the petition on June 11, 2010. Counsel timely submits a Form I-290B, Notice of Appeal or Motion, and subsequently submits a brief in support of the appeal.

On appeal counsel asserts that the director's failure to issue a Notice of Intent to Deny (NOID) the petition prior to entering a decision is in error. Preliminarily, we note that the regulatory requirement to issue a NOID prior to entering a denial decision on a VAWA self-petition was no longer in effect when the instant petition was filed on June 4, 2008. The director is not required to issue a NOID for petitions filed on or after June 18, 2007, in these matters. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) in effect since June 18, 2007, does not require the issuance of a NOID prior to a denial decision.

Abuse

In her initial statement, the petitioner declared that: C-N- abused her credit/debit card; when she confronted C-N- about the loss of money he lost his temper and started yelling and threatening her and pushed her and punched her in the shoulder; he threatened that if she called the police, he would call immigration and she would be arrested and put in jail; he did not let her go anywhere alone and controlled every situation, including not letting her be alone with her family who lived next door; he lived off her salary and credit cards; C-N- started to become menacing and they did not fight because she was intimidated; he forced her to have sex against her will; and C-N- was arrested two months prior to her statement and she discovered that he had a long criminal history of theft, forgery, burglary, escape, and other crimes.

The petitioner also provided statements of others. [REDACTED] declared that C-N- yelled and swore at the petitioner and shoved her around a few times, as well as stealing from her and running up her credit cards. [REDACTED] the petitioner's sister, declared that C-N- did not give the petitioner money, made the petitioner borrow money, and used her credit cards. The petitioner's father declared that the petitioner had "been [beaten] up and mistreated for no reason and also her economy has been breaking down because of [C-N-] during the time of their marriage." The petitioner's stepmother declared C-N- made the petitioner's life terrible by hitting her and asking for money and that the petitioner used to have marks on her arm. In the statement of [REDACTED] declared that within a few months of their marriage, C-N-

¹ Name withheld to protect the individual's identity.

became very cruel and abusive and would yell and threaten to send the petitioner back to Albania.

The petitioner also provided a May 20, 2008 assessment prepared by [REDACTED] [REDACTED] noted that the petitioner came to the Domestic Violence Center on May 7, 2008 and that she reported that: within a couple of weeks of their marriage, C-N- would not let her speak Albanian, would not allow her to go anywhere by herself, and used her credit card without her knowledge and emptied their joint savings account; C-N- yelled, threatened and raged at the petitioner and was very intimidating and frightening; and C-N- was physically abusive, pushing and punching, and forcing her to have sex against her will. [REDACTED] diagnosed the petitioner with post traumatic stress disorder and suggested that the petitioner consider counseling.

In response to the director's RFE, the petitioner provided a second personal statement. In the petitioner's second statement she provided additional information regarding incidents of abuse. The petitioner also provided statements from other individuals on her behalf. [REDACTED] [REDACTED] indicated that he attended dinner at the petitioner's house and that C-N- called the petitioner names and the petitioner reported that C-N- had hit her and called her names on other occasions. The statements of [REDACTED] [REDACTED] do not provide any information indicating that they witnessed specific instances of abuse. The petitioner's father, sister, and stepmother, state generally that they witnessed C-N- calling the petitioner names and they saw the petitioner with bruises on her face and hands that the petitioner said were caused by C-N- hitting her.

The record also included an assessment prepared by [REDACTED] licensed professional clinical counselor, on January 11, 2010. [REDACTED] noted that he had met with the petitioner once or twice a month the previous year and that the petitioner described a classic domestic violence situation with her former husband and had described a molestation and rape perpetrated by her stepfather in Albania. [REDACTED] noted that the petitioner's symptoms as a result of these incidents fit the criteria for a post traumatic stress disorder diagnosis.

Upon review of the petitioner's testimony, the affidavits submitted on her behalf, and the mental health evaluations, there is sufficient consistent information to allow a conclusion that she was subjected to battery perpetrated by C-N-. Thus, the petitioner has established that she was subjected to abuse perpetrated by C-N- and the director's decision to the contrary is withdrawn.

Good Moral Character

The petitioner entered the United States on July 20, 2004 using an Italian passport with someone else's name. The record includes a copy of the Form I-94 completed by the petitioner to gain entry into the United States. The petitioner acknowledges that she entered the United States using a fraudulent passport; however, she claims that she used the false passport because she was afraid for her safety in Albania.

The director determined that the petitioner was subject to section 101(f)(6) of the Act which states, in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

* * *

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act[.]

Upon review of the totality of the record, the record does not establish that the petitioner is subject to the bar to good moral character at section 101(f)(6) of the Act. False testimony under section 101(f)(6) of the Act is limited to oral statements made under oath with the subjective intent of obtaining immigration benefits. *Kungys v. United States*, 485 U.S. 759, 780 (1988). Although the petitioner used the false passport to enter the United States, there is no evidence that she was placed under oath when providing any statements to the examining officer. Thus, section 101(f)(6) of the Act is not applicable in this instance. The petitioner has provided evidence of good moral character, through her own personal statement, affidavits of others, and local police clearances. Accordingly, there is sufficient evidence in the record to demonstrate that the petitioner is a person of good moral character. The director's determination to the contrary is withdrawn.

Good Faith Entry into Marriage

The petitioner has failed to establish that she entered into the marriage in good faith. The petitioner's initial statement indicates generally that: she met C-N- at the restaurant where she worked; they dated for about seven months; and he knew she was having immigration problems so he asked her to marry him so she would not have to leave the United States. The petitioner also indicated that: they met in September 2006 and they socialized with her friends and her family. The remainder of the petitioner's initial statement relates to the description of her accounts and misuse of her money and other claimed abuse by C-N-. The record also included a statement signed by [REDACTED] who declared that she knew the petitioner and C-N- since they had begun dating and that at first they seemed happy and that C-N- took the petitioner out to dinner and was very gentle with the petitioner.

The record also included:

- Wedding photographs and photographs of the couple on other occasions;
- A real estate purchase agreement for the house the petitioner and C-N- claimed as their joint residence, dated April 24, 2007;
- Two pages of a four-page automobile insurance application;
- A Charter One Bank letter dated April 26, 2007 addressed to both the petitioner and C-N- along with a bank statement for a time period between May 10, 2007 through June 11, 2007, and insufficient fund notices;
- Bill collection notices;
- A bill from Illuminating Company for service from January 15, 2008 to February 14, 2008; and

- Three statements from AT&T dated April 28, 2007, August 28, 2007, and March 28, 2008 addressed only to the petitioner.

In response to the director's RFE for more information on this issue, the petitioner provided a second personal statement. The petitioner declared that: she met her ex-husband in September 2006 at the restaurant where she worked; they talked when he came in and after a month she gave him her phone number; she and C-N- went to movies, restaurants, bowling and rented movies to see at his place or hers;² he proposed in March 2007; the couple married on April 16, 2007 at the mansion of her friend and C-N-'s employer, [REDACTED]; and they moved into a house owned by [REDACTED], right next to her parents and although they initially wanted to purchase the home, they did not because it was too expensive.

The record included statements signed by [REDACTED] who declared that they attended the petitioner's wedding to C-N- and that generally they believed the couple to be happy and in love. [REDACTED] and [REDACTED] added that they saw the couple at social events. The petitioner's father, stepmother, and sister also generally indicated their belief that the petitioner was in love and happy to get married.

The petitioner also submitted:

- A facsimile cover sheet and page 4 of the automobile insurance application previously submitted;
- A letter from [REDACTED] dated October 8, 2008 and a bill dated June 4, 2008 addressed to C-N-;
- A letter from [REDACTED] dated May 25, 2007 showing service to the petitioner and C-N- on June 5, 2007, and bills dated March 18, 2008, May 14, 2008, and June 13, 2008;
- Bank statements for the periods of April 25, 2007 through May 9, 2007, June 12, 2007 through July 11, 2007, and July 1, 2008 through September 30, 2008 addressed to C-N- but identifying the petitioner and C-N- as account holders; and additional photographs.

The petitioner's testimony does not include probative evidence of her intent in entering into the marriage in good faith. The petitioner's statements are dedicated primarily to describing C-N-'s deceitful actions and demands for money and other abuse. She does not provide specific and detailed information regarding her intent in marrying. Upon review of the petitioner's statements, she does not provide probative information regarding the couple's interactions prior to or during their marriage, except as it related to the claimed abuse. The petitioner does not provide the requisite type of detail that would allow an adequate assessment of her intent when entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she 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

² The petitioner indicated that she was living with her parents at this time.

record is simply insufficient for such an evaluation. The petitioner's general testimony does not establish that she entered into the marriage in good faith. Similarly, the declarants who submit testimony on the petitioner's behalf refer only to general instances of meeting C-N-, of attending the wedding, of visiting the couple on one or two occasions after the petitioner's marriage, and their observation that the couple looked happy together. The declarants do not describe particular incidents in probative detail regarding their observations of the petitioner's interaction with C-N- and circumstances that demonstrate that the petitioner's intent when entering into the marriage was to establish a life with C-N-.

Upon review of the documentation submitted, as the director observed, the real estate purchase contract was not executed and the petitioner acknowledges in response to the director's RFE that the couple did not purchase a house. The automobile insurance policy was not purchased and the petitioner acknowledges that the automobile insurance policy was not purchased and was not maintained. The [REDACTED] letter dated April 26, 2007 addressed to both the petitioner and C-N- and bank statements without the underlying transactional information is insufficient to establish that the couple used the joint account for the necessities of a life together and similarly, do not assist in establishing the petitioner's intent in entering into the marriage. Letters and bills addressed to C-N- subsequent to the time the petitioner claims the couple resided together does not establish the petitioner's intent when entering into the marriage. Photographs of the couple at their wedding ceremony and on one or two other occasions are also insufficient to establish the petitioner's good faith intent when entering into the marriage. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf also fail to support a finding that she entered into the marriage in good faith. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with C-N- 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 spouse 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 marriage with her spouse 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 also requires the denial of this petition.

The petition will be denied and the appeal dismissed for the above stated reasons. 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. The petition remains denied.