

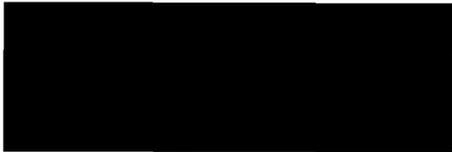
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



B9

Date:

JUN 17 2011

Office: VERMONT SERVICE CENTER

FILE:



IN RE: Petitioner: CHEUNG CHAU

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:

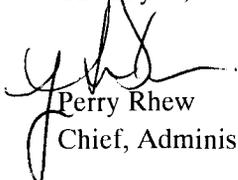


INSTRUCTIONS:

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 the \$630 fee. 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 Vermont Service Center director (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under 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 his United States citizen spouse.

The director denied the petition for failure to establish the requisite abuse and good-faith entry into the marriage. On appeal, counsel submits a brief. Counsel asserts that the director failed to consider all the relevant factors, and that the petitioner has established the requisite abuse and good faith entry into the marriage.

Applicable Law and Regulations

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 further states, in pertinent part:

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

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

(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 or the self-petitioner’s child, 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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of China who entered the United States as a nonimmigrant visitor in 2002. On October 19, 2003, the petitioner married a U.S. citizen in California. The petitioner's wife subsequently filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner, which was

denied on September 28, 2006, due to abandonment. The petitioner filed the instant Form I-360 self-petition on February 17, 2009. The director subsequently issued a request for additional evidence (RFE) that the petitioner had the requisite qualifying relationship, joint residence, abuse, and good-faith entry into the marriage. The petitioner, through counsel, submitted additional evidence. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite abuse and good-faith entry into the marriage.

On appeal, counsel asserts that the evaluation from a certified psychiatrist and the affidavits from the petitioner and from his friends and relatives establish that the petitioner was subjected to extreme cruelty and battery by his wife. Counsel also asserts that the petitioner's self-affidavit, joint tax returns, life insurance, telephone and utility bills, and bank account establish that the petitioner entered into the marriage in good faith. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The relevant evidence submitted below and on appeal does not overcome the director's grounds for denial.

Battery or Extreme Cruelty

In his February 9, 2009 affidavit submitted at the time of filing, the petitioner stated, in part, that: seven months into his marriage with his U.S. citizen wife, the marriage fell apart; his wife complained that he could not satisfy her materially or sexually; he did not try to stop her from spending money because he trusted his wife's ability to manage their finances; when he questioned her about a late rent payment, his wife told him that he was the one who did not make enough money and, as he did not want to fight with her, he pretended that nothing had happened; his wife sometimes came home late and left his daughter home alone without telling him; his daughter told him that his wife had demanded that she stay in her room, and had locked her in her room several times in the past while he was at work; his wife returned home at midnight drunk and high on drugs and told him that she had been out with friends; his wife would not introduce him to her friends; when he tried to resolve the issue between his wife and his daughter, his wife shouted that she was not his daughter's mother and slammed the door and did not return that night; one night his wife came home late, insisted on having sex with him, and when he refused, she insulted him by saying that Asians have small penises and maybe she could find someone else to satisfy her; his wife demanded that he sell "some ecstasy" and when he refused, she threatened to withdraw his immigration paperwork; he begged his wife not to withdraw the paperwork and promised her a better life and more money; as he was anxious and worried that he would not be able to keep his promise, he was unable to sleep at night, lost his appetite, lost weight, and injured himself at work many times due to lack of concentration; due to the shame he felt, he told only his uncle about his marital problems; his uncle had seen him and his wife argue; his wife told him that his uncle looked wicked and demanded that he not see him anymore; his wife humiliated him by saying that he had a low IQ and was broke; his wife used foul language against him in public to show his uncle that she had total control over him; his sister found out about his marital problems from his uncle and she kept calling him until he finally admitted his problems to her; his wife criticized his personal appearance and on one occasion made fun of his hair while they were in a restaurant whereupon he stayed in the bathroom for half an hour, quickly finished his dinner, and waited outside for her; after his uncle found a restaurant job for him in New Jersey, he moved there alone and planned to bring his wife and daughter later; in November 2005, his wife and daughter moved to New Jersey to live with him and though his wife acted normal in the beginning, she became cruel, possessive, violent,

and abusive. The petitioner described one occasion when he refused to have sex with his wife, and she cursed at him, hit him, kicked him several times in the legs, pushed him off the bed, and ordered him to leave the room; during this same incident, he demanded that his wife stop insulting him and she continued kicking him until he left. The petitioner stated, "She had done this to me several times in the past but non-violently." The petitioner stated that after this same incident, he and his wife did not talk much and he tried unsuccessfully to reconcile with her. The petitioner also stated that: his wife became possessive, treated him like a servant, and demanded that he do all the cleaning, cooking, and laundry; his wife ordered him to bring water and snacks to her while she watched television and she shouted at him when he did not hear her; his daughter's behavior changed and she told him that his wife yelled at her, hit her, kicked her legs, slapped her buttocks, and ordered her to her room and not come out without permission; his daughter also told him that on one occasion when she asked his wife to take her to the park, his wife twisted her ear and warned her never to ask again; he checked his daughter's legs and back and found some bruises; when he confronted his wife about mistreating his daughter, she denied having done so and left; his wife was absent from their home "from time to time" and they fought over minor incidents such as when she threw the television remote control and blocked him in the doorway when he wanted to walk by her; when they received their notice in December 2005, to appear for their immigration interview, his wife threatened that she would not go unless he paid her \$10,000; a couple of weeks later when he arrived home from work, he found his daughter with a red face and crying because his wife had slapped her, taken their valuables, and left; when he called his wife, she refused to accept his calls; when he called his wife the day prior to their scheduled immigration interview, she agreed to go with him; when he showed up at the immigration building without the money, she told him to go home and she would reschedule the interview; when he called his wife again, she told him not to call her anymore unless he came up with the money, and refused to answer his calls thereafter; he was devastated and depressed after his wife left him and he was unable to sleep and had nightmares; his sister suggested that he and his daughter move in with her and that he seek medical or professional help; his depression reached a high peak when he thought about taking his own life; and he went to see a psychologist who diagnosed him with Major Depression Disorder.

In his February 18, 2010 affidavit submitted in response to the RFE, the petitioner reiterated the information from his previous affidavit to assert that he suffered severe sexual, emotional, psychological, verbal, and financial abuse by his wife and that after his wife left him, he wished that he would never wake up and, at one point, he felt that he could not go on with his life.

In his January 16, 2009 affidavit submitted at the time of filing, the petitioner's uncle, [REDACTED] stated, in part, that: during their days off, he, the petitioner, and the petitioner's wife would go to parks and shopping malls together; the petitioner and his wife fought a lot because she frequently asked him for money; the petitioner's wife always yelled at the petitioner's daughter; and he advised the petitioner to go to a doctor because he was devastated, could not concentrate on his job, and was always unhappy.

In her February 9, 2009 affidavit submitted at the time of filing, the petitioner's sister, [REDACTED] reiterated much of the information from the petitioner's affidavit and also stated that: the petitioner told her that he and his wife were in love until May 2005; the petitioner seldom called her after May 2005, and when he did call, he sounded unhappy and hesitant; the petitioner told her that everything was fine when she asked, and she later learned about his marital problems from her

uncle; she kept calling the petitioner until he admitted that he had problems with his wife, that she had become a different person, that she always stayed out, and that she loved to buy big brand names; the petitioner also told her that his wife was sometimes absent at night and that she was cruel, possessive, and violent; the petitioner stated that his wife always yelled at his daughter, beat her, and locked her up on several occasions; the petitioner stated that he found some bruises on his daughter's back; the petitioner stated that his wife had verbally and sexually abused him; and the petitioner became depressed and his medical condition worsened until he thought about taking his own life.

In his October 5, 2008 psychiatric evaluation submitted at the time of filing, [REDACTED] stated, in part, that the petitioner was referred by his friend for depression treatment and was last seen on September 28, 2008. [REDACTED] also stated that the petitioner reported that his wife had left him three years ago. [REDACTED] indicated that the petitioner had no suicidal/homicidal history. [REDACTED] diagnosed the petitioner with Major Depression Disorder, single episode, severe without psychosis, which was causally related to the psychological stress from his wife having left him three years ago. Also submitted at the time of filing were eight prescriptions from [REDACTED], dated from July 2008 - January 2009, and six letters dated August - December 2008, from [REDACTED] indicating that the petitioner was seen in their office for treatment/individual sessions.

In response to the RFE, the petitioner submitted seven "return to work/school" letters dated March 2009 - January 2010, from [REDACTED], stating that the petitioner received treatment at their clinic, and three letters dated January - March 2009, from [REDACTED] stating that the petitioner was in his office for an individual session.

In his February 8, 2010 affidavit submitted in response to the RFE, the petitioner's friend, [REDACTED] stated, in part, that: the petitioner started calling him in late 2005, and told him that his wife would not feed his daughter, locked her in her room, slapped and hit her, and shouted and cursed at her; he suspected that the petitioner was also being abused by his wife; and the petitioner asked him on one occasion about the length of his penis because the petitioner's wife had told him that all Asians have small penises.

In her February 15, 2010 affidavit submitted in response to the RFE, the petitioner's former wife, [REDACTED] stated, in part, that: she was having trouble supporting their daughter whereupon the petitioner offered to take care of her; her daughter called her in 2005, and was crying because the petitioner's wife hit her constantly and randomly, did not feed her, punished her and locked her in her room if she cried, did not allow her to use the bathroom, and screamed and yelled at her; the petitioner told her that his wife belittled and insulted him that he was sexually incompetent; and the petitioner's wife left him and their daughter in 2006.

In her February 9, 2010 affidavit submitted in response to the RFE, the petitioner's aunt, [REDACTED] stated, in part, that: the petitioner was close to her and her husband and in 2005, the petitioner contacted her less frequently; though the petitioner was at first reluctant to talk, he told her that his wife had become a completely different person, that she did not take good care of his daughter, that his wife would leave his daughter at home alone, and that she would often scream at her and slap her; the petitioner expressed fear and shame because his wife yelled at him, dominated him, and demanded money from him; and she experienced firsthand the petitioner's suffering, as the

petitioner's wife glared at her whenever she spoke to the petitioner in Chinese, thereby disrespecting her and the petitioner.

In his February 8, 2010 affidavit submitted in response to the RFE, the petitioner's former brother-in-law, [REDACTED] stated, in part, that: his sister (the petitioner's former wife) called him in late 2005, and told him that the petitioner's wife was neglecting and abusing her daughter, that the petitioner's wife always yelled at her daughter, hit her without warning, denied her food, and sent her to her room; the petitioner said he was unable to "press the issue" because his wife would scream, throw things, push him, curse at him, and throw a tantrum; though the petitioner was reluctant to tell him about the situation with his wife, the petitioner did tell him that his wife humiliated and taunted him, slapped and hit him, and mistreated his daughter; and the petitioner's wife left him in 2006.

In her February 11, 2010 affidavit submitted in response to the RFE, the petitioner's sister, [REDACTED] stated, in part, that: the petitioner's daughter called her at the end of 2005, and was crying because the petitioner's wife constantly screamed at her, frequently starved her, hit and slapped her, kicked her legs and spanked her buttocks; the petitioner's daughter was afraid to talk to her on the telephone because the petitioner's wife became agitated whenever Chinese was spoken; and the petitioner's daughter was ordered to stay in her room and was not allowed to use the bathroom.

The director determined that the petitioner had not established that his wife had subjected him to battery or extreme cruelty. Specifically, the director found that the statements from the petitioner and on his behalf contained unresolved discrepancies and inconsistencies, and the incidents described were not comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). On appeal, counsel asserts that the evaluation from a certified psychiatrist and the affidavits from the petitioner and from his friends and relatives establish that the petitioner was subjected to extreme cruelty and battery by his wife. Counsel also asserts that the affidavits from the petitioner's friends and family do not contradict the petitioner's affidavit.

As discussed above, [REDACTED] diagnosed the petitioner with Major Depression Disorder, single episode, severe without psychosis, which was causally related to the psychological stress from his wife having left him three years ago.

[REDACTED] indicated in the psychological evaluation that the petitioner was psychologically stressed because his wife had left him, but he did not provide any details of the petitioner's relationship with his wife or indicate that the petitioner was subjected to any domestic violence from his wife, that her 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. [REDACTED] also did not provide any information indicating that the petitioner's wife's behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. Moreover, while [REDACTED] indicated that he treated the petitioner on numerous occasions, he did not provide any details as to the nature of the treatment or the length of his sessions with the petitioner. It is also noted that while [REDACTED] indicated that the petitioner had no suicidal/homicidal history, the petitioner and the petitioner's sister stated in their testimony that the petitioner had contemplated suicide. The record contains no explanation for this inconsistency.

also indicated that he had treated the petitioner in individual sessions from August – December 2008. however, provided no details of the nature of the petitioner’s medical condition or the treatment he provided. Nor did indicate that abuse from the petitioner’s wife was a causative or contributing factor to the petitioner’s medical condition.

While we do not question the expertise of and their testimony fails to establish that the behavior of the petitioner’s wife constituted battery or extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Neither nor provided substantive, probative information concerning the petitioner’s relationship with his wife, or indicated that the petitioner’s wife’s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

The AAO acknowledges counsel’s assertions on appeal that, contrary to the director’s finding, the statements from the petitioner’s friends and family do not contradict the petitioner’s statements. Counsel states that there are no contradictions between statements and the petitioner’s statements. Counsel also asserts that the petitioner did not contact his former wife, to tell her about the abuse, but rather discovered the abuse through their daughter. A review of February 15, 2010 affidavit, however, finds that stated that the petitioner told her that his wife ridiculed, belittled, and insulted him, which conflicts with the petitioner’s testimony that he told only his uncle and his sister about his marital problems. Counsel also asserts that the petitioner did not contact his former brother-in-law, to tell him about the abuse, but rather discovered the abuse from his sister (the petitioner’s former wife). Again, a review of affidavit finds that stated that the petitioner told him that his wife humiliated and taunted him, slapped and hit him, and mistreated his daughter, which conflicts with the petitioner’s testimony that he told only his uncle and his sister about his marital problems. Counsel also states that the petitioner told his marital problems to his aunt, only after she inquired many times. Again, stated that the petitioner told her that his wife had become a completely different person, that she did not take good care of his daughter, that she would leave his daughter at home alone, that she would often scream at her and slap her, and that his wife yelled at him, dominated him, and demanded money from him, which again conflicts with the petitioner’s testimony that he told only his uncle and his sister about his marital problems. The record contains no explanation for these inconsistencies.

The record also contains other inconsistencies. For example, in her February 9, 2009 affidavit, the petitioner’s sister, stated that the petitioner told her that he and his wife were in love until May 2005, that the petitioner seldom called her after May 2005, and that when he did call, he sounded unhappy and hesitant. This conflicts with the petitioner’s statement in his February 9, 2009 affidavit, that his marriage “fell apart” seven months after he and his wife were married, or approximately May 2004. In addition, in her February 9, 2010 affidavit, the petitioner’s aunt, stated that she experienced firsthand the petitioner’s suffering, and that the petitioner’s wife glared at her whenever she spoke to the petitioner in Chinese and disrespected her and the petitioner. Again, this conflicts with the petitioner’s statement in his February 9, 2009 affidavit that his wife did not like him talking with his uncle in Chinese. In addition, although the petitioner claims that his daughter, who was born on November 15, 1998, resided with him and his wife, she is not listed on their joint income tax returns as a dependent. The record contains no explanation for these deficiencies/inconsistencies.

We find no error in the director's assessment of the relevant evidence. The relevant evidence in this case fails to demonstrate that, during their marriage, the petitioner's spouse subjected him or his daughter to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In his February 9, 2009 affidavit submitted at the time of filing, the petitioner stated, in part, that: he met his U.S. citizen wife at O'Hare National Airport on January 22, 2001, when he and his former wife came to the United States on vacation; while his former wife was shopping, he spotted his U.S. citizen wife and introduced himself; he and his former wife separated after their return to Hong Kong and he called his U.S. citizen wife because he was lonely; he returned to the United States on October 9, 2002, and started dating his U.S. citizen wife during which time they shopped and went to parks and movies; he found a job in a Japanese restaurant and rented an apartment; a month after his arrival in the United States, his former wife came to the United States and gave their daughter to him because she could not support her; he proposed to his U.S. citizen wife in October 2003, and she accepted on the condition that he would help pay off her student loan; his wife agreed to accept his daughter and treat her as her own; his uncle was a witness at their wedding and his wife moved in with him after their marriage; they went to Las Vegas for one day for their honeymoon; and one month later, his wife filed his immigration paperwork.

In his February 18, 2010 affidavit submitted in response to the RFE, the petitioner stated, in part, that he and his wife entered their marriage in good faith.

The director determined that the petitioner had submitted insufficient documentation to establish that he married his wife in good faith. On appeal, counsel asserts that the petitioner's self-affidavit, joint tax returns, life insurance, telephone and utility bills, and bank account information establish that the petitioner entered into the marriage in good faith.

The petitioner is not required to submit preferred primary or secondary evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). In this case, we do not find the petitioner's evidence sufficient to meet his burden of proof. The petitioner provided only a cursory overview of how he met his wife, their courtship, decision to marry, and shared experiences, which, significantly detracts from the credibility of his claim. The photographs submitted showing the couple together on two or three occasions, as well as the photograph of the petitioner's daughter with his wife do not establish the petitioner's intent at the time of his marriage. Similarly, the phone bills, life insurance and bank account statements do not establish that the petitioner and his wife established a life together. The bank statements do not show any activity to indicate that the account was used by either party, and the phone bills cover only the November through December 2005 time period and are not evidence of a bona fide marriage. The documents, when considered in the aggregate, do not include the necessary and fundamental information to establish the petitioner entered into the marriage in good faith. While the lack of documentation is not necessarily disqualifying, in this matter, as previously mentioned the petitioner provides little information regarding his initial meeting with his spouse, their courtship, their discussions of marriage, their plans to marry, and the interactions subsequent to the marriage except as they relate to the claims of abuse. Simply stating that he entered into his

marriage in good faith is insufficient. The petitioner fails to provide probative testimony that contributes to an understanding of his intent when entering into the marriage. Upon review, the record in this matter does not include sufficient probative evidence establishing that the petitioner entered into marriage with spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The petitioner has failed to establish the requisite abuse and good-faith entry into the marriage. Accordingly, the appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed. The petition remains denied.