

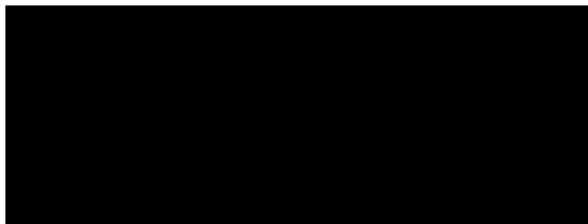
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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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

**PUBLIC COPY**



Bq

DATE: **MAY 05 2011** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$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,

A handwritten signature in black ink.

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 a United States citizen spouse.

The director denied the petition on April 13, 2010, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse. On appeal, counsel submits a brief and copies of documents already included in the record of proceeding.

#### *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 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.

\* \* \*

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

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

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

\* \* \*

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

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

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 (9<sup>th</sup> 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).

#### *Pertinent Facts and Procedural History*

The petitioner is a native and citizen of Ghana. He entered the United States on or about December 18, 2002 on a B-1 visa. On February 22, 2005, the petitioner was placed in removal proceedings. On [REDACTED], the petitioner married A-G,<sup>1</sup> a United States citizen. On October 17, 2005, A-G- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The Form I-130 was denied on June 19, 2007. On November 29, 2007, A-G- filed a second Form I-130 on the petitioner's behalf. The district director issued a Notice of Intent to Deny (NOID) the Form I-130 petition on September 22, 2008 and ultimately denied the Form I-130 on February 12, 2009. On February 2, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that he had resided with A-G- from September 2005 to August 2008. The director issued a request for evidence (RFE) on December 29, 2009. Upon consideration of the evidence in the record, including the response to the RFE, the director denied the petition on May 14, 2010, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty by a United States citizen spouse. Counsel timely submits a Form I-290B, Notice of Appeal or Motion, a statement in support of the appeal, and documentation previously submitted.

#### *Battery or Extreme Cruelty*

The petitioner initially submitted a January 22, 2009 personal statement regarding his relationship with A-G-. He stated that about six months after their marriage, his relationship with A-G- changed. The petitioner explained that although A-G- had previously worked, once the couple married, A-G- refused to work and told him he had to support her and her three children. The petitioner noted that her refusal to work "resulted in frequent arguments and a household full of tension." The petitioner also noted that he discovered that A-G- smoked. The petitioner stated that in the spring of 2006, the fights regarding her lack of work and her smoking continued and A-G- also started threatening him about his immigration status and threatening to call the police if he did not continue to support her. The petitioner noted that A-G- wanted to move to [REDACTED] and live with her mother but he did not want to leave [REDACTED]. In June 2006, the petitioner suggested that A-G- move to [REDACTED] because the couple argued so much. The petitioner noted further that A-G- did move to [REDACTED] but she would return unannounced to [REDACTED] for the weekend. The petitioner reported that the couple spent Thanksgiving 2006 together with A-G-'s children in [REDACTED] and when he raised the issue of A-G- getting a job so they could have children together, she became angry and she "became very violent and hit [him] on the chest." The petitioner noted that he thought about calling the police but did not and drove back to [REDACTED] that night. The petitioner indicated that he again visited A-G- at Christmas

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<sup>1</sup> Name withheld to protect the individual's identity.

2006 and the couple continued to visit back and forth between [REDACTED] and [REDACTED]. The petitioner noted that right before their immigration interview the couple had an argument in the parking lot of a shopping center over A-G-'s spending habits. The petitioner also stated his belief that A-G- deliberately failed to answer questions correctly at the couple's immigration interview and that A-G- was very angry after the interview and hit him on the chest and tore the buttons off his shirt and he held her hands and tried to push her away from him. The petitioner noted that he did not call the police because he thought the police always believed the husband was the aggressor.

The petitioner reported that after the immigration interview, A-G- stayed in [REDACTED] but visited [REDACTED] about two times per month on the weekends. The petitioner also reported his confusion that the Form I-130 denial indicated that A-G- was receiving public assistance and had not reported their marriage to the [REDACTED] public assistance authorities. The petitioner noted that when he confronted A-G- with this information, she "exploded like the night of the interview and went wild hitting [him] and cursing" and he left the house because he feared for his safety. The petitioner reported that in June/July 2007, after the burial of A-G-'s grandmother, A-G- became angry that he had to leave for work and started cursing him in front of her family and when he tried to walk away, she tore a button off his jacket. The petitioner noted that A-G- opened up accounts in his name that he did not know about, that he believed she was using drugs, and that she overdrew their Wachovia account. The petitioner noted that when he confronted A-G- with the overdrawn account she became angry and "grabbed his shirt and hit [his] chest." The petitioner noted that in June 2008 he asked A-G- to drive him to the hospital for medical treatment but she refused and when he returned from the hospital he asked her to leave for good. The petitioner noted further that a few days later he returned from work and found that A-G- had taken her things and some of his as well and when he drove to [REDACTED], he found that the family had moved and left no forwarding address. The petitioner reported that in October 2008, A-G- called him and told him she was moving to [REDACTED] and filing for divorce but that he had not heard from her since that time and had not received any divorce papers.

The petitioner also provided a January 13, 2009 statement signed by his landlady, [REDACTED]. Ms. [REDACTED] declared that she had heard the couple arguing, that A-G-'s language to her husband was inappropriate, and that on June 5, 2008, the petitioner asked her to accompany him to the hospital because his wife, who was at home at that time, refused to go with him because of an argument the night before. The record also included a December 19, 2008 statement signed by [REDACTED], A-G-'s cousin, who declared that she had introduced A-G- to the petitioner and that after the couple married, everything changed and when she would run into them, A-G- was always calling the petitioner nasty names, even in public. The record further included a December 26, 2008 affidavit signed by [REDACTED], who declared that the petitioner had told him of his marital troubles.

In a March 8, 2010 statement, the petitioner declared that A-G- called him names, his marital problems started because A-G- did not want to work, she became aggressive when he told her she needed to work, and she threatened to call the police if he kept asking her to work. The petitioner stated that at Thanksgiving in 2006 A-G-insulted him in front of her kids and her mother and he was so embarrassed and terrified that he left the house. The petitioner does not

indicate that A-G- became violent and hit him on the chest as set forth in his initial statement. The petitioner noted that in March 2007 A-G- yelled at him in public after he told her he did not have money for her to buy a new outfit. The petitioner reiterated that in the summer of 2007, A-G- insulted him in front of her family after her grandmother's burial and when he ignored her insults she pulled him by his jacket and after he returned from work and confronted her regarding her earlier actions, she became verbally abusive and repeated that he was not man enough to satisfy her sexually. The petitioner reported that when he confronted A-G- regarding an overdrawn account, she insulted him using extremely hateful language. The petitioner adds that on New Year's Eve, when he came home A-G- was cutting vegetables and when he attempted to hug her, she pointed the knife at him and he was terrified so he left immediately. The petitioner noted that during the couple's fights, A-G- would always threaten to call immigration or the police and he always felt controlled because he thought the police would believe her lies.

In a second statement signed by [REDACTED] A-G-'s cousin, dated February 25, 2010, Ms. [REDACTED] added to her previous statement by declaring: that she and the couple were at a jewelry store and she heard A-G- call the petitioner names; that after her grandmother's funeral, A-G- shouted at the petitioner, pulled his jacket and hit him on the chest until the petitioner left; and on one occasion she asked A-G- about something that the petitioner had told her and A-G- turned to the petitioner and called him names and slapped him and then ran away. In a second statement signed by [REDACTED] the petitioner's landlady, Ms. [REDACTED] added she heard arguing on three different occasions and on one of the occasions she knocked on the door to see if they were ok.

Based on the information in the record, the director denied the petition determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by A-G-.

On appeal, counsel for the petitioner asserts that the petitioner suffered constant verbal abuse from his United States citizen spouse and also suffered from physical abuse and the physical abuse was witnessed by other individuals. Counsel contends that the director did not give sufficient weight to the statements submitted by others on the petitioner's behalf. Counsel avers that although each act of abuse when taken alone may not constitute abuse, in the aggregate A-G-'s acts amount to a pattern of abuse and violence. Counsel asserts that the petitioner has proffered a substantial account of the abuse and acts which when considered in the aggregate would constitute extreme cruelty for immigration purposes. Counsel also claims that the director's denial is contrary to the public policy underlining the enactment of VAWA in that A-G- controlled whether the petitioner acquired legal immigration status in the United States.

Upon review of the petitioner's statements to United States Citizenship and Immigration Services (USCIS), the petitioner does not provide a consistent probative account of the alleged physical abuse. In his initial statement, he refers to: an incident occurring on Thanksgiving 2006 when A-G- "became very violent and hit [him] on the chest;" an incident occurring after their immigration interview when she hit him on the chest and tore the buttons off his shirt; an incident occurring when he confronted A-G- with not reporting their marriage to [REDACTED] public assistance authorities and she "exploded like the night of the interview and went wild

hitting [him] and cursing"; an incident occurring after A-G-'s grandmother's funeral when she tore a button off his jacket when he tried to walk away from an argument; and the last occasion when he confronted her regarding an overdrawn account where she became angry and "grabbed his shirt and hit [his] chest." None of these incidents described by the petitioner provide the detail necessary to establish that A-G- perpetrated battery upon the petitioner. The incidents appear to involve a mutually combative situation and the petitioner's testimony does not include sufficient probative detail regarding the incidents to conclude otherwise.

Moreover, in response to the director's RFE, the petitioner lists the same arguments as noted in his initial statement but does not provide any further detail describing any alleged battery; rather the petitioner's second statement is limited to general statements regarding A-G-'s insults and verbally abusive behavior. Although the petitioner adds an incident that allegedly occurred on New Year's Eve when A-G- pointed a knife at him, he does not explain why the information regarding this incident was not previously forthcoming, nor does he provide sufficient information to conclude that A-G-'s act of pointing a knife escalated to include a physical assault. The petitioner's failure to provide additional detail regarding the specifics of any alleged battery in his second statement undermines his credibility and casts doubt on the actuality of the incidents occurring in the initial general manner described.

Upon review of the initial statements submitted by [REDACTED] [REDACTED], none of the declarants provide descriptions of physical assault perpetrated by A-G- upon the petitioner. [REDACTED] initially indicated that she heard the couple arguing and heard A-G- using inappropriate language but she does not describe incidents of battery that she observed. Similarly, [REDACTED] comments on A-G-'s name calling in public but does not describe witnessing any incidents of battery. Likewise, [REDACTED], although indicating that the petitioner had discussed his marital problems with him, does not describe witnessing any instances of battery.

Unlike the petitioner's second statement, which is limited to general descriptions of verbal acts by A-G-, the second statement of [REDACTED] adds two instances of battery she allegedly observed. [REDACTED] indicates that after her (and A-G-'s) grandmother's funeral, A-G- pulled the petitioner's jacket and hit him on the chest and on another occasion, she saw A-G- slap the petitioner and run away. Neither of [REDACTED]'s recollections corresponds with information supplied by the petitioner. As observed above, the petitioner mentions that after A-G-'s grandmother's funeral, A-G- tore a button off his jacket but he does not reference being hit. The petitioner does not refer to an incident of being slapped by A-G- in either of his statements. [REDACTED]'s statement regarding the petitioner being hit and slapped is inconsistent with the petitioner's accounts. Moreover she fails to explain why she did not initially provide this information. The lack of probative consistent information in [REDACTED] [REDACTED]'s testimony significantly diminishes the probative value of her testimony.

Upon review of the testimony regarding instances of battery allegedly perpetrated by A-G-, the information is not consistent, is not detailed, and accordingly, is not probative in establishing that physical abuse occurred. The record is insufficient to establish that the petitioner was subjected to battery perpetrated by A-G-.

The record is also insufficient in establishing that the petitioner was subjected to extreme cruelty as defined in the statute and regulations. The petitioner initially indicated that A-G-'s refusal to work "resulted in frequent arguments and a household full of tension" and they fought about A-G's smoking, her spending habits, and her refusal to get a job. The petitioner stated generally that A-G- insulted him and called him names, embarrassed him in public and in front of her family, and threatened him regarding his immigration status if he did not continue to support her. The petitioner's testimony is not specific and does not include sufficient detailed information to conclude that A-G-'s name calling, insults, and financial excess constituted extreme cruelty. Although the petitioner indicated that A-G- threatened that she would call immigration on several occasions, the petitioner does not describe the circumstances of these threats in detail. There is no evidence that A-G- used tactics of control intertwined with these threats in order to maintain her dominance through fear; rather the petitioner's testimony indicates that the couple argued and a few months after their marriage A-G- returned to her residence in [REDACTED]. Although the couple continued to see each other, the record lacks specific probative evidence demonstrating that A-G- exercised control or dominance over the petitioner through fear.

Upon review of the statements submitted on the petitioner's behalf, [REDACTED] s statements confirm that the couple argued and that A-G- called the petitioner names. Similarly, [REDACTED] noted that she had witnessed A-G- calling the petitioner names in public. [REDACTED] g's affidavit does not include sufficient probative testimony to ascertain whether he directly observed arguments or the couple's interactions. The statements provided do not contain the necessary consistent detail of specific incidents and events that sufficiently demonstrate that A-G-'s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

The petitioner has failed to establish that A-G'-s actions were comparable to the types of 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. Nor has the petitioner established that A-G-'s behavior was part of an overall pattern of violence or coercion. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The petitioner in this matter does not provide specific incidents of verbal abuse that demonstrate domestic violence.

The record does not support counsel's assertion that A-G-'s acts in the aggregate amount to a pattern of abuse and violence. The petitioner's testimony and the testimony of others on his behalf fail to provide consistent detailed evidence that A-G-'s behavior constituted extreme cruelty as set out in the statute and regulation. Similarly, counsel's claim that A-G- controlled the petitioner's access to legal immigration status in the United States and that the denial of the Form I-360 is contrary to public policy underlining the enactment of VAWA is without merit. The petitioner's statements that A-G- threatened him regarding his immigration status are

insufficiently detailed to establish that A-G- used the petitioner's immigration status to coerce, control, or manipulate him in the manner described in the statute and regulation. He does not describe the particular circumstances of the threats and moreover does not indicate that A-G-'s verbal threats were accompanied by any coercive actions or threats of harm. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless. In this matter, when evaluating the record as a whole, the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty under the statute and regulation.

#### *Good Faith Entry into Marriage*

Beyond the decision of the director, the petitioner has failed to establish that he entered into the marriage in good faith. The petitioner stated that he met A-G- when she came to [REDACTED] [REDACTED] to visit her cousin and that subsequently they talked on the phone and spent time together when A-G- would visit her cousin. The petitioner noted that the couple dated, that they talked on the phone frequently, and that on July 4, 2005 he proposed. He does not provide probative information regarding his specific intent when entering into the marriage. He does not describe the couple's interactions and joint life for the time that the couple was married and residing together. The petitioner does not provide the requisite information regarding his interactions with A-G- subsequent to the marriage, except as it relates to the claimed abuse.

The record does include photographs of the couple and children on unidentified occasions; however, photographs are insufficient to establish the petitioner's intent when entering into the marriage. The record also includes bank statements regarding a joint bank account and utility statements mailed to the petitioner's address in [REDACTED] that also include A-G-'s name. These documents also fail to the petitioner's intent when entering into the marriage. The record includes inconclusive information regarding tax returns individually filed by the petitioner and allegedly filed by A-G-, as well as tax returns allegedly jointly filed. The tax returns do not establish the petitioner's intent when entering into the marriage. The record further includes statements from [REDACTED] and [REDACTED]; however these statements do not include probative details regarding the declarants personal observations of the petitioner's interactions with A-G- and do not include testimony that assists in establishing the petitioner's intent when entering into marriage.

Upon review of the totality of the record, the petitioner's statements fail to provide substantive information regarding his courtship with and marriage to A-G-. The petitioner does not describe the couple's mutual interests, he does not describe their daily routines in detail, and he does not provide probative information for the record that assists in determining his 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 petitioner has not set forth his intent in detail and the record does not include sufficient consistent probative

evidence that the couple established a life together. Upon review, the record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with A-G- 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, 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 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 his marriage. The record does not include sufficient information to determine that the bona fide marriage exception to section 204(g) of the Act applies to this 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.

Although the record includes some information regarding the bona fides of marriage, eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). 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 (5<sup>th</sup> 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 A-G- 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. For this additional reason, the petition may not be approved.

### *Conclusion*

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.