

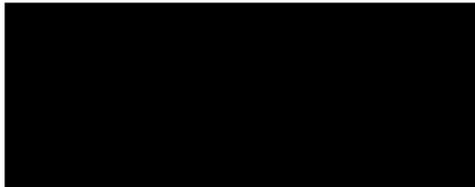
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



B9.

DATE: **JAN 30 2012** Office: VERMONT SERVICE CENTER

FILE:

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 will remain denied.

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 a United States citizen.

The director determined that the petitioner had not established that he had: been subjected to battery or extreme cruelty perpetrated by the United States citizen; or entered into the marriage in good faith. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief, and additional declarations.

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 set forth 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.

Facts and Procedural History

The petitioner is a native and citizen of India. He claims he entered the United States in 1992. The petitioner was subsequently placed in immigration proceedings and on March 27, 1995 the petitioner was ordered excluded from the United States. The petitioner appealed the decision and the Board of Immigration Appeals (BIA) rendered its decision on October 19, 1998 affirming the immigration judge's decision and determining that the petitioner had failed to establish statutory eligibility for asylum and withholding of deportation.¹ On [REDACTED] 1999,² the petitioner married [REDACTED],³ the claimed abusive United States citizen spouse while under the removal order. On May 3, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner claimed on the Form I-360 that he resided with [REDACTED] from February 28, 1999 until December 20, 2007. The record includes evidence that divorce proceedings were initiated on December 14, 2007 and that the divorce was ordered in August 2009 with a minute order distributing the couple's assets. The final decree dissolving the marriage was filed in Alameda County, California on [REDACTED] 2011. Based on the initial evidence in the record, the director determined that a request for evidence (RFE) must be issued. Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty or that he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, a brief and additional documentation.

Preliminarily, we acknowledge counsel's assertion on appeal that the director did not follow the "all credible evidence" standard, pursuant to section 204(a)(1)(J) of the Act which requires United States Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS]." Section 204(a)(1)(J) of the Act 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty and good faith lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv) and (vii). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim, the agency is not obligated to determine that all such evidence is sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

Battery and/or Extreme Cruelty

¹ On February 26, 2010, the Ninth Circuit Court of Appeals denied the petitioner's January 28, 2010 petition for panel rehearing to review the Board of Immigration Appeals' order.

² The petitioner stated that he also married [REDACTED] in a religious ceremony on [REDACTED] 1998; the petitioner's spouse's divorce from her first husband was not issued and filed with the Santa Clara County California Superior Court until [REDACTED] 1999.

³ Name withheld to protect the individual's identity.

In the petitioner's initial statement accompanying the Form I-360, the petitioner stated his former wife married him for money, he paid for her cosmetology course in 1999, and he gave her money for a down payment on a house in 2003. The petitioner declared that his former spouse made him sign a quit claim deed to the house and she forged his name on checks. The petitioner also declared that his former spouse used foul language behind closed doors and in front of friends, threw his keys at him many times, threatened that she would report him to immigration if he ever told anyone about their relationship and she had three abortions against his wishes. The petitioner also noted that he slept in his big rig truck to avoid fights and that she hid his mail from him. The petitioner indicated that when his former spouse learned he had told someone about what was happening, she started fighting and arguing and pushing and hitting him and subsequently kicked him out of the house.

In response to the director's RFE, the petitioner submitted six declarations, five of the declarations included references to [REDACTED]'s treatment of the petitioner. As the director noted, the declarants indicated generally that the petitioner's spouse was aggressive, did not allow him to make decisions, used foul and abusive language, demeaned him, insulted him in front of family and friends, was emotionally abusive and controlling, and removed the petitioner from the marital home leaving him no place to live. The petitioner also provided copies of checks written on his business account in support of his claim that his wife forged his name on the checks.

The petitioner further provided an August 6, 2010 letter and an October 19, 2010 letter prepared by [REDACTED] a counselor at the [REDACTED]. In the August 6, 2010 letter, Ms. [REDACTED] noted that the petitioner attended counseling beginning in April 2010 and that the petitioner had reported feeling anxious, depressed and fearful due to the abuse. In the October 19, 2010 letter, the letter-writer repeated the petitioner's claims set out in his initial statement and added that [REDACTED] would speak to the petitioner in a loud voice and strong tone and would yell at him over trivial monetary matters. The letter-writer also indicated the petitioner's report that [REDACTED] would invite her friends over but he would not have his friends over because he wanted to avoid upsetting [REDACTED]. The letter-writer concluded that there was a long history of domestic violence in the marriage and that the petitioner had been maintaining a positive attitude since getting help at the [REDACTED].

Upon review of the record, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty as those terms are defined in the statute and regulation.

On appeal, counsel for the petitioner provides the petitioner's second⁴ statement dated June 21, 2011. The petitioner repeats that his former spouse used his earnings for a down payment on a house and then had him sign a document indicating he did not have any ownership in the home, that she had two abortions without his knowledge, that she threatened him with deportation, tried to isolate him from his friends and family by being rude when people visited or being upset when

⁴ The record on appeal also contains a statement that does not include a date, the petitioner's name, or signature which counsel indicates was part of the petitioner's initial submission. The statement provides the same information as the petitioner's initial statement.

he wanted to go to their homes, threw utensils and keys at him, and that he often had to sleep in his big rig. The petitioner claims that his spouse hid interview notices from immigration that came in the mail and that in March 2006 he was arrested for failure to appear in immigration court and this was the first he was aware that he had been placed in removal proceedings. The petitioner noted that as a result of his arrest he was placed under supervision and thus was unable to continue his long haul trucking job. The petitioner reiterates that his spouse called him names and was disrespectful and would say and do these things in front of others. On November 2, 2007, the petitioner reports that his former spouse shouted at him because she learned he had told friends what was going on in their home and that she then hit him with her hand holding a key and pushed him out the door and locked the door and told him he could not stay at the house anymore.

The record on appeal also includes declarations signed by [REDACTED] and [REDACTED]. [REDACTED] states that her daughter visited the petitioner and [REDACTED] and told her that the petitioner's former spouse was mean to the petitioner and yelled at him. [REDACTED] and his wife, [REDACTED] declare that the petitioner's former spouse yelled at the petitioner in front of them and on one occasion in 2005, they witnessed the petitioner's former spouse yelling and screaming at the petitioner and pushing him and throwing keys at him.

Counsel asserts that the director erred in discounting the petitioner's initial statement and those of the declarants who provided testimony on his behalf and erred further when not considering the declarants' testimony that the petitioner told them of his belief that [REDACTED] stalked him, that he cried in front of male friends due to the abuse, and that [REDACTED] isolated him from family members. Counsel asserts that the director erred when requiring the petitioner to provide specific evidence that his spouse used his immigration status to control or coerce him, to demonstrate that his wife and family coerced him into signing a quit claim deed, and that her abortions were indicative of abuse. Counsel contends that the petitioner did not file a police report because of his cultural values and his male role and cites and provides articles addressing issues in regards to being a battered man.

Upon review, the director properly considered the petitioner's statement and the evidence of record when determining that the petitioner failed to provide sufficient evidence that he had been subjected to battery or extreme cruelty as that term is defined in the statute and regulation. The petitioner primarily repeats the information on appeal that he had initially provided. Counsel's contention that the director erred when requiring the petitioner to provide specific evidence is not persuasive. The petitioner does not provide detailed testimony of specific incidents that constitute battery. Although the petitioner generally refers to being hit, pushed, and locked out of the claimed marital home on one occasion in November 2007, the petitioner does not include sufficient information regarding the totality of the circumstances of this incident to ascertain that he was subjected to battery perpetrated by [REDACTED]. Similarly, the petitioner's reference to having keys thrown at him many times does not include sufficient detail regarding the alleged incidences to conclude that these actions constituted battery.

Counsel's assertion that the director did not properly consider the petitioner's testimony that he was manipulated financially and was emotionally harmed because of his former spouse's

abortion, her name calling and disrespectful behavior and that he was socially isolated and the victim of her criminal behavior, is unpersuasive. The director properly considered the evidence and identified the deficiencies in the petitioner's statement and the statements of his friends and family. The petitioner repeats his claims on appeal but does not provide further testimony regarding specific incidents of his former spouse's behavior sufficient to conclude that her behavior constituted extreme cruelty under the statute and regulation. For example, although the petitioner claims that his former spouse threatened him with his immigration status, he does not provide detail of specific instances where he felt threatened and the circumstances of the claimed threats. The petitioner does not provide evidence or testimony that impugns the validity of the court order. Further, the petitioner does not provide sufficient detail regarding his claims that his former spouse threw his keys at him on many occasions and that he had to sleep in his big rig rather than the claimed marital home. As the director explained the record fails to demonstrate that these actions constituted extreme cruelty and the petitioner's affidavit on appeal offers no new testimony. The petitioner's testimony does not include the requisite detailed information sufficient to conclude that his former spouse's behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over him.

The director in this matter properly reviewed and addressed the deficiencies of the declarations submitted on the petitioner's behalf. The declarants, although noting generally that the petitioner's former spouse was aggressive, did not allow him to make decisions, used foul and abusive language, demeaned him, insulted him in front of family and friends, and was emotionally abusive and controlling, do not discuss any specific incident of battery or extreme cruelty in probative detail, or provide any substantive description of their contemporaneous observations of the effects of any abuse on the petitioner. Similarly, the statement of [REDACTED] provided on appeal does not include any probative testimony of abuse of which she was aware. The statements of [REDACTED] and [REDACTED] refer generally to an instance of [REDACTED] yelling at the petitioner in front of them and on another occasion yelling and pushing the petitioner and throwing keys at him. Neither [REDACTED] nor [REDACTED] provides probative detail of the circumstances surrounding the exchanges they witnessed. The couple does not provide sufficient detail in their declaration to conclude that the interactions they claim to have witnessed constitutes battery or extreme cruelty as those terms are defined in the statute and regulation.

Upon review of the letters signed by [REDACTED], a counselor at the [REDACTED] [REDACTED] does not offer a formal diagnosis of the petitioner's condition and moreover does not causally connect any of [REDACTED] specific behavior to the petitioner's condition. Her letters do not provide substantive, probative information detailing specific behavior on the part of the petitioner's former spouse that constitutes extreme cruelty as that term is defined in the statute and regulation. The articles submitted by counsel regarding male victims of domestic violence do not provide information pertinent to the interactions between the petitioner and his former spouse.

Counsel mistakenly believes that USCIS requires the petitioner to provide a police incident report to demonstrate battery or extreme cruelty. We note that the lack of a police incident report

does not weigh negatively on the petitioner's claim. The petitioner, however, must still provide probative, detailed testimony in order to establish his claim. In this matter, the petitioner has failed to provide the required testimony.

The petitioner fails to provide specific testimony of the verbal or emotional abuse allegedly suffered and he does not describe specific instances of exploitation, forced social isolation, psychological abuse, or control perpetrated by [REDACTED]. Upon review, the petitioner has not offered probative testimony establishing that [REDACTED] 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 [REDACTED] 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 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). Based upon a review of the totality of the evidence in the record, the petitioner has not established that he was subjected to battery or conduct that constitutes extreme cruelty as defined in the statute and regulation.

Good Faith Entry into Marriage

In the petitioner's initial personal statement, he stated generally that he married [REDACTED] in an Indian Sikh ceremony in the presence of family and friends in 1998 and then registered the marriage in 1999 in Reno, Nevada. He stated that he married in good faith, that he accepted her son from her previous marriage as his own, and that he gave all his earnings to her since the day he married her in the Sikh temple. The petitioner also provided copies of tax returns.

In response to the director's RFE, the petitioner in a December 29, 2010 statement requested an exemption from section 204(g) of the Act stating that he merited an exemption because he had married his spouse in good faith. The petitioner also provided an undated declaration signed by [REDACTED] who declared that he introduced the couple and their families and that this was an arranged marriage. Mr. [REDACTED] indicated he knew that the petitioner loved, cared, and respected [REDACTED] and had married her for life. The record included an additional five declarations, in which two of the declarants noted generally either that the petitioner's marriage was genuine or that the petitioner genuinely cared for his spouse. The remaining three declarations did not offer testimony regarding the petitioner's marriage except as it related to the claim of abuse. The petitioner also provided a copy of a May 2002 letter from an international school located in India indicating that the petitioner's spouse's son was the son of the petitioner, a copy of a life insurance application, a copy of a car insurance card and additional copies of tax returns and photographs.

The director considered the evidence submitted, set out the deficiencies in the evidence provided, and determined that the petitioner had not established that he had married his spouse in good faith.

On appeal, counsel for the petitioner asserts that the marriage was an arranged marriage and provides the petitioner's additional personal statement. The petitioner in his statement on appeal declares that as he was interested in getting married and per the custom in his culture, he sought an arranged marriage. He notes that his good friend, [REDACTED] arranged his marriage with [REDACTED] and that [REDACTED] told him that she was from a good family and from the same culture and religion. The petitioner states that he was also told that [REDACTED] was a single mother with a son and that she lived with her parents. The petitioner indicates he met [REDACTED] and her parents on one occasion when he discussed his career and financial situation and talked with her for about half an hour to get to know her. The petitioner states that he liked her and thought she was pretty and told her parents that and [REDACTED] parents decided that could get married. The petitioner indicates the couple and [REDACTED] parents planned a small religious ceremony and they married on [REDACTED] 1998 in the Sikh temple and registered the marriage on [REDACTED] 1999 in Nevada. The petitioner notes that he enjoyed a relationship with his former spouse's son and that the couple sent the boy to boarding school in India as the petitioner's son and that the boy stayed at the boarding school for nine months out of the year but that after a couple of years he lived with them. The petitioner indicates that he supported his former spouse's enrollment in cosmetology school and went to her graduation. The petitioner notes that the couple planned to buy a home and that his former spouse's brother paid the down payment with his personal check rather than a cashier's check from money the petitioner and [REDACTED] had saved.

The record also includes a printout of an Internet article⁵ on Sikh arranged marriages noting that an arranged marriage is not a forced marriage but one that involves mutual discussion between the man and the woman on one side and the parents and relatives on the other side. The article states: "[m]ost importantly the man and woman themselves must get to know each other to convey their consent to their parents." Counsel also provides declarations signed by [REDACTED] and [REDACTED]. [REDACTED] states generally that the petitioner's marriage was arranged in 1998 and that the petitioner married [REDACTED] for the rest of his life. Mr. [REDACTED] and [REDACTED] state that they had known the couple since April 2000 and believed that the couple's relations were like a real husband and wife. Counsel further provides a statement signed by [REDACTED] who adds to his previous statement that when he found that both the families of the petitioner and his former wife were looking for a match he arranged a meeting at a restaurant, then "they" had two meetings which included him at public places before getting into the customary marriage at the Sikh temple in 1998. [REDACTED] declares that he did not doubt the petitioner's intentions as the petitioner was not in removal or deportation proceedings which only occurred late in the marriage when [REDACTED] hid the petitioner's mail. Counsel also includes a cashier check made out to an apartment complex with an undecipherable date and asserts the check was for the couple's first apartment. The record includes photographs and a DVD of the petitioner and [REDACTED] together on different occasions.

The petitioner provides a general overview of his initial contact with [REDACTED] and although he claims that the marriage was arranged does not provide the detail of the preliminary meetings with [REDACTED] and her parents. He states, instead, that he spent about half an hour getting to know

⁵ The printout is from www.searchsikhism.com and is dated 2004.

her and liked her and thought she was pretty. According to the article provided by counsel, an arranged marriage requires that a couple must spend enough time together to get to know each other. The petitioner fails to describe, in any meaningful detail, the couple's decision to marry, their engagement, their wedding, or any of their shared experiences, except as it relates to a few general statements regarding the claim of abuse. His statements are insufficient to support and ascertain his actual intent when entering into the marriage.

In the declaration of [REDACTED] the individual who claimed he arranged the marriage, [REDACTED] provides general testimony that conflicts with the petitioner's statement regarding the couple's initial meeting(s). Further, [REDACTED] declares that the petitioner was not in removal proceedings when he entered into marriage with [REDACTED] and thus had no motive to marry [REDACTED] for immigration purposes, a statement which conflicts with the record. [REDACTED] declarations do not provide his observations of the couple in detail and are insufficient to assist in establishing the petitioner's intent when entering into the marriage. The declarations of [REDACTED] [REDACTED] and [REDACTED] on appeal provide a general statement regarding their belief that the marriage was genuine and that the couple behaved as husband and wife. However, the declarations provided below and on appeal contain no probative information regarding the petitioner's intentions in marrying his spouse. Although the petitioner's friends all attest to knowing the petitioner and his spouse as a married couple, they do not describe any particular visit or social occasion in detail or otherwise provide detailed information establishing their personal knowledge of the relationship.

The director set out the deficiencies in the documentary evidence submitted and we concur with the director's review and determination. The petitioner submits additional photographs and a DVD on appeal and while this information may show that the couple was together on one or more occasions, the information does not demonstrate the petitioner's good faith in entering the marriage or sufficiently establish the couple's shared experiences. The letter from the international school does not identify the petitioner's spouse's son by the correct name and the petitioner does not provide sufficient testimonial evidence to support his claim of a relationship with the child. As the director recognized, the lack of documentary evidence is not necessarily disqualifying, however, the petitioner's testimony lacks the probative detail necessary to establish that he entered into the marriage in good faith. The petitioner has not provided probative evidence regarding the courtship, the alleged wedding ceremonies, shared residence and experiences to establish that he entered into the marriage in good faith. The petitioner has not established that he entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

The director noted in his decision that as the petitioner was in removal proceedings when he married [REDACTED] in 1999, he must establish with clear and convincing evidence that he married her in good faith in order to qualify for an exemption to section 204(g) of the Act. Upon review of the information in the record, 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 former 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 AAO finds that the petitioner does not qualify for the bona fide marriage exception to section 204(g) of the Act. Section 245(e) of the Act states:

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

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

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

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

bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). To demonstrate eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the petitioner must establish his or her good faith entry into the qualifying relationship by a preponderance of the evidence and any relevant, credible evidence shall be considered. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. §§ 1154(a)(1)(A)(iii)(I)(aa), 1154(a)(1)(J); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”).

As the petitioner has failed to establish that he entered into his marriage with his spouse 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.

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.