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In re Rowan

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In re Rowan

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Law Offices of Jamie Quarles
112 Charles St.
Franklin City, Franklin 33797

TO: Examinee
FROM: Jamie Quarles
DATE: February 25, 2014
RE: *Matter of William Rowan*

We represent William Rowan, a British citizen, who has lived in this country as a conditional permanent resident because of his marriage to Sarah Cole, a U.S. citizen. Mr. Rowan now seeks to remove the condition on his lawful permanent residency.

Normally, a married couple would apply together to remove the conditional status, before the end of the two years of the noncitizen's conditional residency. However, ten months ago, in April 2013, Ms. Cole and Mr. Rowan separated, and they eventually divorced. Ms. Cole actively opposes Mr. Rowan's continued residency in this country.

However, Ms. Cole's opposition does not end Mr. Rowan's chances. As the attached legal sources indicate, he can still file Form I-751 Petition to Remove Conditions on Residence, but in the petition he must ask for a waiver of the requirement that he file the petition jointly with his wife.

Acting pro se, Rowan timely filed such a Form I-751 petition. The immigration officer conducted an interview with him. Ms. Cole provided the officer with a sworn affidavit stating her belief that Rowan married her solely to obtain residency. The officer denied Rowan's petition.

Rowan then sought our representation to appeal the denial of his petition. We now have a hearing scheduled in Immigration Court to review the validity of that denial. Before the hearing, we will submit to the court the information described in the attached investigator's memo, which was not presented to the immigration officer. We do not expect Cole to testify, because she has moved out of state.

Please draft our brief to the Immigration Judge. The brief will need to argue that Mr. Rowan married Ms. Cole in good faith. Specifically, it should argue that the immigration officer's decision was not supported by substantial evidence in the record before him and that the totality of the evidence supports granting Rowan's petition.

I have attached our guidelines for drafting briefs. Draft only the legal argument portion of the brief; I will draft the caption and statement of facts.

Law Offices of Jamie Quarles
112 Charles St.
Franklin City, Franklin 33797

TO: Attorneys
FROM: Jamie Quarles
DATE: March 29, 2011
RE: Format for Persuasive Briefs

These guidelines apply to persuasive briefs filed in trial courts and administrative proceedings.

I. Caption
[omitted]

II. Statement of Facts (if applicable)
[omitted]

III. Legal Argument

Your legal argument should be brief and to the point. Assume that the judge will have little time to read and absorb your argument. Make your points clearly and succinctly, citing relevant authority for each legal proposition. Keep in mind that courts are not persuaded by exaggerated, unsupported arguments.

Use headings to separate the sections of your argument. In your headings, do not state abstract conclusions, but integrate factual detail into legal propositions to make them more persuasive. An ineffective heading states only: "The petitioner's request for asylum should be granted." An effective heading states: "The petitioner has shown a well-founded fear of persecution by reason of gender if removed to her home country."

Do not restate the facts as a whole at the beginning of your legal argument. Instead, integrate the facts into your legal argument in a way that makes the strongest case for our client. The body of your argument should analyze applicable legal authority and persuasively argue how both the facts and the law support our client's position. Supporting authority should be emphasized, but contrary authority should also be cited, addressed in the argument, and explained or distinguished.

Finally, anticipate and accommodate any weaknesses in your case in the body of your argument. If possible, structure your argument in such a way as to highlight your argument's strengths and minimize its weaknesses. If necessary, make concessions, but only on points that do not concede essential elements of your claim or defense.

Law Offices of Jamie Quarles
112 Charles St.
Franklin City, Franklin 33797

TO: File
FROM: Jamie Quarles
DATE: November 25, 2013
RE: Interview with William Rowan

I met with William Rowan today. Rowan is a British citizen and moved to the United States and to Franklin about two and a half years ago, having just married Sarah Cole. They separated in April 2013; their divorce became final about 10 days ago. In late April, after the separation, Rowan, acting pro se, petitioned to retain his permanent residency status. After that petition was denied by the immigration officer, Rowan called our office.

Rowan met Cole in Britain a little over three years ago. He had been working toward a graduate degree in library science for several years. He had begun looking for professional positions and had come to the realization that he would have better job opportunities in the United States. He had two siblings already living in the United States.

He met Cole when she was doing graduate work in cultural anthropology at the university where he was finishing his own academic training as a librarian. He says that it was love at first sight for him. He asked her out, but she refused several times before she agreed. After several weeks of courtship, he said that he felt that she shared his feelings. They moved in together about four weeks after their first meeting and lived together for the balance of her time in Britain.

Soon after they moved in together, Rowan proposed marriage to Cole. She agreed, and they married on December 27, 2010, in London, England. Cole subsequently suggested that they move to the United States together, to which he readily agreed. In fact, without telling Cole, Rowan had contacted the university library in Franklin City, just to see if there were job opportunities. That contact produced a promising lead, but no offer. He and Cole moved to Franklin City at the end of her fellowship in May of 2011.

Rowan soon obtained a job with the Franklin State University library. He and Cole jointly leased an apartment and shared living expenses. At one point, they moved into a larger space, signing a two-year lease. When Cole needed to purchase a new car, Rowan (who at that point had the more stable salary) co-signed the loan documents. Both had health insurance

through the university, and each had the other named as the next of kin. They filed two joint tax returns (for 2011 and 2012), but they divorced before they could file another.

Their social life was limited; if they socialized at all, it was with his friends. Rowan consistently introduced Cole as his wife to his friends, and he was referred to by them as "that old married man." As far as Rowan could tell, Cole's colleagues at work did not appear to know that Cole was even married.

Cole's academic discipline required routine absences for field work, conferences, and colloquia. Rowan resented these absences and rarely contacted Cole when she was gone. He estimates that, out of the approximately two and a half years of cohabitation during the marriage, they lived apart for an aggregate total of seven months.

In March of 2013, Cole announced that she had received an offer for a prestigious assistant professorship at Olympia State University. She told Rowan that she intended to take the job and wanted him to move with her, unless he could give her a good reason to stay. She also had an offer from Franklin State University, but she told him that the department was not as prestigious as the Olympia department. He made as strong a case as he could that she should stay, arguing that he could not find another job in Olympia comparable to the one that he had in Franklin.

Cole chose to take the job in Olympia, and she moved there less than a month later. Rowan realized that he would always be following her, and that she would not listen to his concerns or needs. He told her that he would not move. She was furious. She told him that in that case, she would file for a divorce. She also told him that she would fight his effort to stay in the United States. Their divorce was finalized on November 15, 2013, in Franklin.

Rowan worries that without Cole's support, he will not be able to keep his job in Franklin or stay in the United States. He does not want to return to the United Kingdom and wants to maintain permanent residency here.

In re Form I-751, Petition of William Rowan to Remove Conditions on Residence

Affidavit of Sarah Cole

Upon first being duly sworn, I, Sarah Cole, residing in the County of Titan, Olympia, do say:

1. I am submitting this affidavit in opposition to William Rowan's Form I-751 Petition to Remove Conditions on Residence.

2. I am a United States citizen. I married William Rowan in London, England, on December 27, 2010. This was the first marriage for each of us. We met while I was on a fellowship in that city. He was finishing up his own graduate studies. He told me that he had been actively looking for a position in the United States for several years. He pursued me and after about four weeks convinced me to move in with him. Shortly after this, William proposed marriage and I accepted.

3. We decided that we would move to the United States. I now believe that he never seriously considered the option of remaining in Britain. I later learned that William had made contacts with the university library in Franklin City, Franklin, long before he proposed.

4. Before entering the United States in May 2011, we obtained the necessary approvals for William to enter the country as a conditional resident. We moved to Franklin City so that I could resume my studies.

5. During our marriage, William expressed little interest in my work but expressed great dissatisfaction with the hours that I was working and the time that I spent traveling. My graduate work had brought me great success, including the chance at an assistant professorship at Olympia State University, whose cultural anthropology department is nationally ranked. But William resisted any idea of moving and complained about the effect a move would have on our marriage and his career.

6. Eventually, I took the job in Olympia and moved in April 2013. While I knew that William did not like the move, I had asked him to look into library positions in Olympia, and he had done so. I fully expected him to follow me within a few months. I was shocked and angered when, instead, he called me on April 23, 2013, and informed me that he would stay in Franklin.

7. I filed for divorce, which is uncontested. It is my belief that William does not really care about the divorce. I believe now that he saw our marriage primarily as a means to get U.S. residency. I do think that his affection for me was real. But his job planning, his choice of

friends, and his resistance to my career goals indicate a lack of commitment to our relationship. In addition, he has carefully evaded any long-term commitments, including children, property ownership, and similar obligations.

Signed and sworn this 2nd day of July, 2013.

Sarah Cole

Sarah Cole

Signed before me this 2nd day of July, 2013.

Jane Mirren

Jane Mirren
Notary Public, State of Olympia

Law Offices of Jamie Quarles
112 Charles St.
Franklin City, Franklin 33797

TO: File
FROM: Victor Lamm, investigator
DATE: February 20, 2014
RE: Preparation for Rowan Form I-751 Petition

This memorandum summarizes the results of my investigation, witness preparation, and document acquisition in advance of the immigration hearing for William Rowan.

Witnesses:

— George Miller: friend and coworker of William Rowan. Has spent time with Rowan and Cole as a couple (over 20 social occasions) and has visited their two primary residences and has observed them together. Will testify that they self-identified as husband and wife and that he has heard them discussing leasing of residential property, purchasing cars, borrowing money for car purchase, and buying real estate, all together and as part of the marriage.

— Anna Sperling: friend and coworker of William Rowan. Has spent time with both Rowan and Cole, both together and separately. Will testify to statements by Cole that she (Cole) felt gratitude toward Rowan for moving to the United States without a job, and that Cole was convinced that Rowan "did it for love."

Documents (Rowan to authenticate):

— Lease on house at 11245 Old Sachem Road, Franklin City, Franklin, with a two-year term running until January 31, 2014. Signed by both Cole and Rowan.

— Promissory note for $20,000 initially, designating Cole as debtor and Rowan as co-signer, in connection with a new car purchase.

— Printouts of joint bank account in name of Rowan and Cole, February 1, 2012, through May 31, 2013.

— Joint income tax returns for 2011 and 2012.

— Certified copy of the judgment of divorce.

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EXCERPT FROM IMMIGRATION AND NATIONALITY ACT OF 1952

TITLE 8 U.S.C., Aliens and Nationality

8 U.S.C. § 1186a. Conditional permanent resident status for certain alien spouses and sons and daughters

(a) In general

(1) Conditional basis for status: Notwithstanding any other provision of this chapter, an alien spouse . . . shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

. . .

(c) Requirements of timely petition and interview for removal of condition

(1) In general: In order for the conditional basis established under subsection (a) of this section for an alien spouse or an alien son or daughter to be removed—

(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the Secretary of Homeland Security a petition which requests the removal of such conditional basis . . . .

. . .

(4) Hardship waiver: The Secretary . . . may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that—

. . .

(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) and the alien was not at fault in failing to meet the requirements of paragraph (1).

EXCERPT FROM CODE OF FEDERAL REGULATIONS

TITLE 8. Aliens and Nationality

8 C.F.R. § 216.5 Waiver of requirement to file joint petition to remove conditions by alien spouse

(a) General.

(1) A conditional resident alien who is unable to meet the requirements . . . for a joint petition for removal of the conditional basis of his or her permanent resident status may file a Petition to Remove the Conditions on Residence, if the alien requests a waiver, was not at fault in failing to meet the filing requirement, and the conditional resident alien is able to establish that:

. . .

(ii) The marriage upon which his or her status was based was entered into in good faith by the conditional resident alien, but the marriage was terminated other than by death . . .

. . .

(e) Adjudication of waiver application—

. . .

(2) Application for waiver based upon the alien's claim that the marriage was entered into in good faith. In considering whether an alien entered into a qualifying marriage in good faith, the director shall consider evidence relating to the amount of commitment by both parties to the marital relationship. Such evidence may include—

(i) Documentation relating to the degree to which the financial assets and liabilities of the parties were combined;

(ii) Documentation concerning the length of time during which the parties cohabited after the marriage and after the alien obtained permanent residence;

(iii) Birth certificates of children born to the marriage; and

(iv) Other evidence deemed pertinent by the director.

. . .

Hua v. Napolitano

United States Court of Appeals (15th Cir. 2011)

Under the Immigration and Nationality Act, an alien who marries a United States citizen is entitled to petition for permanent residency on a conditional basis. *See* 8 U.S.C. § 1186a(a)(1). Ordinarily, within the time limits provided by statute, the couple jointly petitions for removal of the condition, stating that the marriage has not ended and was not entered into for the purpose of procuring the alien spouse's admission as an immigrant. 8 U.S.C. § 1186a(c)(1)(A).

If the couple has divorced within two years of the conditional admission, however, the alien spouse may still apply to the Secretary of Homeland Security to remove the conditional nature of her admission by granting a "hardship waiver." 8 U.S.C. § 1186a(c)(4). The Secretary may remove the conditional status upon a finding, *inter alia*, that the marriage was entered into in good faith by the alien spouse. 8 U.S.C. § 1186a(c)(4)(B).

On September 15, 2003, petitioner Agnes Hua, a Chinese citizen, married a United States citizen of Chinese descent and secured conditional admission as a permanent United States resident. The couple later divorced, and Hua applied for a hardship waiver. But the Secretary, acting through a U.S. Citizenship and Immigration Services (USCIS) immigration officer, then an immigration judge, and the Board of Immigration Appeals (BIA), denied Hua's petition. Hua appeals the denial of the petition.

Hua has the burden of proving that she intended to establish a life with her spouse at the time she married him. If she meets this burden, her marriage is legitimate, even if securing an immigration benefit was one of the factors that led her to marry. Hua made a very strong showing that she married with the requisite intent to establish a life with her husband. Hua's evidence, expressly credited by the immigration judge and never questioned by the BIA, established the following:

(1) She and her future husband engaged in a nearly two-year courtship prior to marrying.

(2) She and her future husband were in frequent telephone contact whenever they lived apart, as proven by telephone records.

(3) Her future husband traveled to China in December 2002 for three weeks to meet her family, and she paid a 10-day visit to him in the United States in March 2003 to meet his family.

(4) She returned to the United States in June 2003 (on a visitor's visa which permitted her to remain in the country through late September 2003) to decide whether she would remain in the United States or whether her future husband would move with her to China.

(5) The two married in a civil ceremony on September 15, 2003, and returned to China for two weeks to hold a more formal reception (a reception that was never held).

(6) The two lived together at his parents' house from the time of her arrival in the United States in June 2003 until he asked her to move out on April 22, 2004.

Hua also proved that, during the marriage, she and her husband jointly enrolled in a health insurance policy, filed tax returns, opened bank accounts, entered into automobile financing agreements, and secured a credit card. *See* 8 C.F.R. § 216.5(e)(2)(i).

Nevertheless, the BIA cited four facts in support of its conclusion that Hua had failed to carry her burden: (1) her application to secure conditional permanent residency was submitted within two weeks of the marriage; (2) Hua and her husband married one week prior to the expiration of the visitor's visa by which she came to the United States in June 2003; (3) Hua's husband maintained an intimate relationship with another woman during the marriage; and (4) Hua moved out of the marital residence shortly after obtaining conditional residency. Hua's husband's extramarital affair led to cancellation of the reception in China and to her departure from the marital home.

We do not see how Hua's prompt submission of a conditional residency application after her marriage tends to show that Hua did not marry in good faith. As we already have stated, the visitor's visa by which Hua entered the country expired just after the marriage, so Hua had to do something to remain here lawfully.

As to the affair maintained by Hua's husband, that might offer an indication of Hua's marital intentions if Hua knew of the relationship at the time she married. However, the uncontradicted evidence establishes that Hua learned of the affair only after the marriage.

The timing of the marriage and separation appear at first glance more problematic. Ordinarily, one who marries one week prior to the expiration of her visitor's visa and then moves out of the marital home shortly after the conditional residency interview might reasonably be thought to have married solely for an immigration benefit.

But well-settled law requires us to assess the entirety of the record. A long courtship preceded this marriage. Moreover, Hua's husband, and not Hua, initiated the separation after Hua publicly shamed him by retaining counsel and detailing his affair at her conditional residency interview.

We conclude that the Secretary's decision lacks substantial evidence on the record as a whole, and thus that petitioner Hua has satisfied the "good faith" marriage requirement for eligibility under 8 U.S.C. § 1186a(c)(4)(B). Remanded for proceedings consistent with this opinion.

Connor v. Chertoff

United States Court of Appeals (15th Cir. 2007)

Ian Connor, an Irish national, petitions for review of a decision of the Board of Immigration Appeals (BIA), which denied him a statutory waiver of the joint filing requirement for removal of the conditional basis of his permanent resident status on the ground that he entered into his marriage to U.S. citizen Anne Moore in bad faith. 8 U.S.C. § 1186a(c)(4)(B).

Connor met Moore in January 2002 when they worked at the same company in Forest Hills, Olympia. After dating for about one year, they married in a civil ceremony on April 14, 2003. According to Connor, he and Moore then lived with her family until November 2003, when they moved into an apartment of their own. In January 2004, Connor left Olympia to take a temporary job in Alaska, where he spent five weeks. Connor stated that in May 2004, he confronted Moore with his suspicion that she was being unfaithful to him. After Moore suggested they divorce, the two separated in June 2004 and divorced on November 27, 2004, 19 months after their wedding.

U.S. Citizenship and Immigration Services (USCIS) had granted Connor conditional permanent resident status on September 15, 2004. On August 16, 2005, Connor filed a Petition to Remove Conditions on Residence with a request for waiver. *See* § 1186a(c)(4)(B).

Moore voluntarily submitted an affidavit concerning Connor's request for waiver. In that affidavit, Moore stated that "Connor never spent any time with [her] during the marriage, except when he needed money." They never socialized together during the marriage, and even when they resided together, Connor spent most of his time away from the residence. Moore expressed the opinion that Connor "never took the marriage seriously" and that "he only married [her] to become a citizen." Connor's petition was denied.

At Connor's hearing, the government presented no witnesses. Connor testified to the foregoing facts and provided documentary evidence, including a jointly filed tax return, an unsigned lease for an

apartment dated November 2003, eight canceled checks from a joint account, telephone bills listing Connor and Moore as residing at the same address, an application for life insurance, and an application for vehicle title. There was no evidence that certain documents, such as the applications for life insurance and automobile title, had been filed. Connor also provided a letter from a nurse who had treated him over an extended period of time stating that his wife had accompanied him on most office visits, and letters that Moore had written to him during periods of separation.

Other evidence about Connor's life before and after his marriage to Moore raised questions as to his credibility, including evidence of his children by another woman prior to his marriage to Moore. Connor stated that Moore knew about his children but that he chose not to list them on the Petition for Conditional Status and also that the attorneys who filled out his I-751 petition omitted the children due to an error. Connor testified that he did not mention his children during his interview with the USCIS officer because he thought that they were not relevant to the immigration decision as they were not U.S. citizens.

In a written opinion, the immigration judge found that Connor was not a credible witness because of his failure to list his children on the USCIS forms or mention them during his interview and because of his demeanor during cross-examination. The immigration judge commented on Connor's departure for Alaska within eight months of his marriage to Moore, and on the lack of any corroborating testimony about the bona fides of the marriage by family or friends. The immigration judge concluded that the marriage had not been entered into in good faith and denied Connor the statutory waiver. The BIA affirmed.

Under the substantial evidence standard that governs our review of § 1186a(c)(4) waiver determinations, we must affirm the BIA's order when there is such relevant evidence as reasonable minds might accept as adequate to support it, even if it is possible to reach a contrary result on the basis of the evidence. We conclude that there was substantial evidence in the record to support the BIA's adverse credibility finding and its denial of the statutory waiver.

Adverse credibility determinations must be based on "specific, cogent reasons," which

the BIA provided here. The immigration judge's adverse credibility finding was based on Connor's failure to inform USCIS about his children during his oral interview and on the pertinent USCIS forms. Failing to list his children from a prior relationship undercut Connor's claim that his marriage to Moore was in good faith. That important omission properly served as a basis for an adverse credibility determination.

Substantial evidence supports the determination that Connor did not meet his burden of proof by a preponderance of the evidence. To determine good faith, the proper inquiry is whether Connor and Moore intended to establish a life together at the time they were married. The immigration judge may look to the actions of the parties after the marriage to the extent that those actions bear on the subjective intent of the parties at the time they were married. Additional relevant evidence includes, but is not limited to, documentation such as lease agreements, insurance policies, income tax forms, and bank accounts, as well as testimony about the courtship and wedding. Neither the immigration judge nor the BIA may substitute personal conjecture or inference for reliable evidence.

In this case, inconsistencies in the documentary evidence and the lack of corroborating testimony further support the agency's decision. Connor provided only limited documentation of the short marriage. Unexplained inconsistencies existed in the documents, such as more addresses than residences. Connor provided no signed leases, nor any indication of any filed applications for life insurance or automobile title. No corroboration existed for Connor's version of events from family, friends, or others who knew Connor and Moore as a couple. Connor offered only a letter from a nurse, who knew him only as a patient.

Finally, Connor claims that Moore's affidavit was inadmissible hearsay, and that it amounted to unsupported opinion testimony on the ultimate issue. Connor misconstrues the relevant rules at these hearings. The Federal Rules of Evidence do not apply; evidence submitted at these hearings must only be probative and fundamentally fair. To be sure, Moore's affidavit does contain opinion testimony on Connor's intentions. However, the affidavit also contains relevant factual information drawn from firsthand observation. The immigration judge was entitled to rely on that information in reaching his conclusions.

It might be possible to reach a contrary conclusion on the basis of this record. However, under the substantial evidence standard, the evidence presented here does not compel a finding that Connor met his burden of proving that the marriage was entered into in good faith.

Affirmed.

NOTES

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The problem is set in the fictitious state of Franklin, in the fictitious Fifteenth Circuit of the United States. Columbia and Olympia are also fictitious states in the Fifteenth Circuit. In Franklin, the trial court of general jurisdiction is the District Court, the intermediate appellate court is the Court of Appeal, and the highest court is the Supreme Court.

You will have two kinds of materials with which to work: a File and a Library. The first document in the File is a memorandum containing the instructions for the task you are to complete. The other documents in the File contain factual information about your case and may include some facts that are not relevant.

The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant. Any cases may be real, modified, or written solely for the purpose of this examination. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read them thoroughly, as if they all were new to you. You should assume that the cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references.

Your response must be written in the answer book provided. If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

Although there are no restrictions on how you apportion your time, you should allocate approximately half your time to reading and digesting the materials and to organizing your answer before you begin writing it. You may make notes anywhere in the test materials; blank pages are provided at the end of the booklet. You may not tear pages from the question booklet.

This performance test will be graded on your responsiveness to the instructions regarding the task you are to complete, which are given to you in the first memorandum in the File, and on the content, thoroughness, and organization of your response.