

MPT – February 2014 – Selected Answer 1

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

MEMORANDUM

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

Ms. Quarles,

As requested in your memorandum, please find below my draft of the "legal argument" section of the brief:

III. Legal Argument

A. The standard for Removal of Conditions is Good Faith

The traditional standard for the removal of a condition on an alien spouse's residence is set out by 8 USC 1186a, as requiring a joint petition by both spouses. Where, as here, the other (non-alien) spouse cannot or will not join the petition, the statute provides a number of exceptions. The relevant exception to this case provides that the condition may be removed if the alien spouse demonstrates (1) that the marriage was entered into in good faith by the alien spouse, and (2) the lack of a joint petition is not the fault of the alien spouse.

Additional texture is given to this statute by the regulations. 8 CFR 216.5 provides that in the determination of a spouse's "good faith" we should consider (i) extent to which assets and liabilities of the parties were combined, (ii) length of cohabitation, (iii) children of the marriage, and (iv) any other evidence.

The court in *Hua v. Napolitano* elaborates and lists four factors relevant to a good faith determination in the course of overturning an adverse BIA determination. (1) the length of time between the marriage and the application for conditional residency, (2) the length of time between marriage and expiration of a visitor visa, (3) infidelity, and (4) conduct of the parties after determination of conditional residency.

B. The BIA did not have sufficient evidence to make an adverse credibility determination against Rowan

Under *Connor v. Chertoff*, this court uses the "Substantial Evidence" standard of review. The court may overturn the BIA's decision where there is not "such relevant evidence as reasonable minds might accept as adequate to support" the BIA's decision.

An adverse credibility determination, under *Connor*, requires "specific, cogent reasons" for the finding that the alien spouse/witness is not credible. In *Connor*, the petitioner had filled out immigration forms falsely, misled his attorneys, abandoned a prior family, and engaged in various other morally reprehensible conduct - the court places particular emphasis on his failure to list his previous children in his immigration forms or inform USCIS about his children during his interview. This conduct is to be sharply distinguished from Rowan's. In the instant case, there are no "specific, cogent reasons" available in the record that would indicate Rowan is not credible. At most, we have a statement by his former spouse that she is of the *opinion* that he married her only to obtain citizenship. Discord between former lovers and spouses are to be expected, and it is entirely normal that she might have a low opinion of Rowan. However, the BIA could not have found Rowan's testimony to be non-credible because of the complete lack of specific facts in the record tending to show the same.

C. The Evidence Shows that Rowan and Cole Intended to Establish a Life Together at the Time of Marriage

Under *Connor v. Chertoff* and *Hua v. Napolitano*, the standard of "good faith" is "whether [the parties] intended to establish a life together at the time they were married".

1. Length of the Courtship - The first factor to be considered here is the length of the courtship. Rowan met Cole over three years ago, and began dating almost immediately. After a few weeks of dating, they moved in together and married

soon thereafter. While the precise length of time that they dated and were engaged is not clear from the factual record here [**Note to Draft: please obtain clarification from Rowan on the precise length of time they dated**], the standard set by *Hua* is probably satisfied. In *Hua*, the parties divorced soon after marriage and the BIA considered an argument that the rapid divorce was evidence of bad faith. The appellate court clarified that the relevant standard was the expectation of the parties *at the time of the marriage* and proceeded to conclude that a two-year courtship indicated good faith, and would not support an adverse determination by BIA. Here, while the courtship seems to have been a much shorter period than two years, we can infer the intent to make a life together at the time of the marriage from the fact that the parties here apparently stayed married for two and a half years. If the parties had not intended to make a life together in a good faith marriage, it would have been reasonable to expect Rowan to apply for removal of his conditional status *immediately* after entering the US to allow both parties to dissolve the "sham marriage" and go their separate ways as quickly as reasonably possible. However, they did nothing of the sort. The length of courtship/marriage does not support a bad faith determination.

2. *Combination of Assets and Liabilities*- In *Connor*, the court found that inconsistent documentation, "no corroboration", unsigned or incomplete documents and similar inconsistencies riddled the record and tended to indicate a lack of good faith. However, Rowan's case presents precisely the opposite scenario. In addition to the inevitable co-mingling of finances that would have resulted from a prolonged cohabitation (present here) we have evidence that when Rowan and Cole moved to Franklin, they jointly leased an apartment and shared living expenses. Then, they signed a longer-term lease (two years) for a house together. The lease term of two years also tends to indicate they intended to establish a life together. In addition, we have evidence of a \$20,000 promissory note for a new car. One who is engaging in a marriage in bad faith would probably be reluctant to co-sign on a note, and become liable, for such a large amount of money. In addition, the parties had a joint bank account, and filed taxes jointly for 2011 and 2012. This is to be distinguished from the facts in *Connor* where the parties provided only one jointly filed tax return, an unsigned apartment lease, an unfiled application for vehicle title, some bills, and life insurance. The evidence of co-mingling in Rowan's case is much stronger. However, in *Hua*, the presence of tax returns, a joint health insurance policy, joint bank accounts, and an automobile financing agreement was not considered dispositive. In any event, the evidence of co-mingling does not support a determination of a lack of good faith.

While Cole does allege that Connor didn't want to buy property, this statement is just as consistent with the situation of many young couples trying to establish themselves on firm financial footing before committing to a very large purchase such as a house. We should not infer anything regarding his intent to establish a life together.

3. *Witnesses* - Here, Rowan "held himself out as" a married person to all of his friends and consistently introduced Cole as his wife. His friends seemed to believe him as they referred to him as "that old married man". This is to be contrasted with the situation in *Connor* where each spouse essentially maintained a separate social life. While we don't have any indication that Cole's friends knew she was married, this might be explained by the fact that the couple didn't socialize as much and she was new to the area. While potentially suspicious, the *lack* of evidence that she affirmatively excluded him from her social life is the key point here. There is no support for a determination of bad faith.

4. *Timing Issues* - The parties married on December 27, 2010, but did not move to the United States until May 2011. This tends to support and inference that the marriage was in good faith because in a bad faith marriage, the alien spouse likely would have tried to achieve a move to the United States more quickly than six months later. In *Hua*, the court found that even a very short timeframe between the marriage and the application to secure conditional residency was acceptable given the circumstances (viz. what else was the spouse supposed to do in order to remain in the country?). The fact that Cole and Rowan seem to have "taken their time" moving to the United States clearly contradicts a conclusion that there was no good faith.

5. *Other* - By Cole's own admission, Rowan wanted her to stay in Franklin and not take the other job. This tends to support a conclusion of good faith.

D. The Admission of Cole's Affidavit into Evidence is Questionable Due to its Limited Probative Value and Even if Admissible Does Not Support BIA's Finding of No Good Faith.

While the hearsay rules of the Federal Rules of Evidence do not apply in a case such as this, the standard of evidence is that the evidence need only be probative and fundamentally fair. The affidavit of Ms. Cole may or may not be of probative value. As discussed above, when parties go through a divorce, it's understandable that they no longer have the fondest feelings for one another. Here, Cole's opinion that Rowan "saw our marriage primarily as a means to get U. S. Residency" should be viewed in a skeptical light.

However, even discounting this objection, the affidavit is of limited probative value as to the issue of good faith because (a) Ms. Cole states that she thinks his objective was *primarily* to get citizenship - not *only* to get citizenship, and (b) that she does believe his affection was real. Under the standards indicated above - whether the parties "intended to establish a life together" this statement is not probative, because at worst, it suggests that Rowan had his eye on citizenship in addition to having his eye on Ms. Cole. There is absolutely *no* suggestion that he did *not* seek to establish a life with Ms. Cole. In fact, *Hua v. Napolitano* expressly states that "if [petitioner] meets [the "life together" standard, the] marriage is legitimate, *even if securing an immigration benefit was one of the factors that led [petitioner] to marry.*" [emphasis added]. Therefore, any of the other side's evidence regarding Rowan's interest in the university job or in moving to America is inapposite.

MPT – February 2014 – Selected Answer 2

ARGUMENT

I The immigration officer's decision was not supported by substantial evidence because Mr. Rowan and Ms. Cole intended to establish a life together at the time of their marriage. Mr. Rowan and Ms. Cole intended to establish a life together at the time of their marriage. When an alien who marries a United States citizen petitions for the removal of conditions on permanent residence, the typical procedure is the filing of a joint petition. See 8 U.S.C. §1186a. However, if the couple divorces within two years of the condition without the joinder of his spouse by the granting of a hardship waiver, 8 U.S.C. §1186a(c)(4). The alien-petitioner has the burden of proving that he "intended to establish a life with her spouse at the time she married him." *Hua v. Napolitano*, (15th Cir. 2011). When determining such intent, the court is required to assess the entirety of the record. *Id.* Even if securing an immigration benefit was one of the factors leading the petitioner to marry, the Court must still overturn the denial of such a waiver petition if the petitioner proffer's substantial evidence of the petitioner's intent to establish a life with his spouse. *Id.* The standard of review of these actions is whether there is "such relevant evidence as reasonable minds might accept as adequate to support [the immigration officer's decision], even if it is possible to reach a contrary result on the basis of the evidence." *Connor v. Chertoff*, (15th Cir. 2007). Here, Ms. Cole's own affidavit admits that "his affection for me was real." Their courtship began at university, and she voluntarily moved into Mr. Rowan's apartment after just four weeks. They went on to live together prior and following their marriage. After they moved to Franklin, Mr. Rowan and Ms. Cole cohabitated, took a variety of steps to join their finances, and held themselves out as happily married to the community. Moreover, Mr. Rowan will testify that he did love Ms. Cole and intend to establish a life with her, and that it was Ms. Cole, not Mr. Rowan, who suggested that they move to the United States together. There is some evidence that Mr. Rowan and Ms. Cole's marriage began to deteriorate *after* they had moved to Franklin as Mr. Rowan was unhappy with Ms. Cole's extensive out-of-town work commitments. However, this evidence is not evidence of a lack of good faith on the part of Mr. Rowan at the time the marriage was entered into. In fact, a careful reading of the entirety of the evidence of record demonstrates no evidence of a lack of good faith at the time of the marriage at all. Since there is no evidence of a lack of good faith on Mr. Rowan's part at the time of the marriage, reasonable minds could not accept that lack of evidence as adequate to support the immigration officer's decision. The substantial evidence standard is deferential, but it is not so deferential that the immigration officer's decision can rest on no evidence at all. Accordingly, the petitioner respectfully requests that this Court reverse the immigration officer's decision and grant unconditional permanent residency to Mr. Rowan.

II Mr. Rowan and Ms. Cole's post-marriage actions such as cohabiting and joining their finances are substantial evidence of a good faith commitment by both parties to the marital relationship. Mr. Rowan and Ms. Cole cohabited after the marriage and took numerous steps to join their finance which is evidence of Mr. Rowan's good faith in entering into the marriage. In addition to the intent of the parties at the time the marriage was entered into, the immigration officer must consider evidence relating to the amount of commitment by both parties to the marital relationship including the degree to which financial assets of the parties are combined, the length of time the parties cohabited after the marriage, and other pertinent evidence. 8 C.F.R. § 216.5(e) (2). Evidence of joint finances such as joint bank accounts, automobile financing agreements, and jointly filed tax returns has been held to be sufficient evidence of good faith, but when that evidence is not authenticated, inconsistent, or not proper, courts find a lack of good faith. *Compare, Hua v. Napolitano*, (15th Cir. 2011) *with, Connor v. Chertoff*, (15th Cir. 2007). In *Hua*, Ms. Hua and her husband had jointly enrolled in a health insurance policy, had filed joint tax returns, opened joint bank accounts, and entered into automobile financing and credit card agreements. *Hua*, (15th Cir. 2011). The contrary evidence was essentially problems with timing. Ms. Hua married her husband just prior to her visa expiring, and she moved out of the marital residence, due to her husband's infidelity, shortly after obtaining the conditional residency. Apparently, the coincidental timing caused the immigration officer to doubt Ms. Hua's good faith. However, the 15th Circuit properly ruled

that the evidence of courtship, cohabitation, and the above-described joint finances was sufficient to defeat any inference of a lack of good faith due to timing. In *Connor*, Mr. Connor married a U.S. citizen but was unable to secure a reversal at the 15th Circuit in large part because he could not demonstrate the joint nature of their finances. Mr. Connor proffered joint applications for automobile title and a life insurance policy, but he could not prove that they had been filed. He provided a joint telephone bill showing the two residing at the same address, but could not provide a signed lease. In his case, the Court properly upheld the immigration officer's decision as comporting with substantial evidence primarily because of inconsistencies with his evidence of joint finances and a lack of credibility. Here, Mr. Rowan proffered the following evidence of joint finances: (1) a jointly signed lease with a two-year term for a house in Franklin; (2) a jointly signed promissory note where Mr. Rowan cosigned for Ms. Cole's new car; (3) evidence of a joint bank account; (4) evidence of jointly filed tax returns. This evidence tracks much more closely with the evidence in *Hua* than the evidence in *Connor*. In fact, Mr. Rowan is proffering nearly exactly the same evidentiary items as the *Hua* court found sufficient. Moreover, despite some time not cohabiting after the marriage due to Ms. Cole's work, Mr. Rowan and Ms. Cole cohabited for a period of years together in Franklin. This evidence, taken as a whole, strongly supports Mr. Rowan's good faith. There are few facts tending to show inconsistency or attempts to trick the court with poor evidence as in *Connor*. Finally, Mr. Miller and Ms. Sperling will corroborate the fact that Mr. Rowan married Ms. Cole for love and held themselves out as married in the community. This testimony bolsters the credibility of Mr. Rowan and tends to disprove the allegations in Ms. Cole's affidavit. Specifically, Ms. Cole's affidavit states that Mr. Rowan married her "primarily" as a means to get U.S. residency, which, if true, would likely defeat his application. However, Ms. Sperling will testify that Cole felt gratitude towards Rowan for moving to the United States without a job, and that Rowan "did it for love," which tends to disprove Ms. Cole's opinion. Mr. Miller's testimony serves primarily to buttress the idea that they had joint finances. This corroboration of the evidence and testimony offered by Mr. Rowan himself by witnesses who have no interest in the petition provides overwhelming evidence that Mr. Rowan entered into the marriage in good faith. Taken in its entirety, this Court should find that substantial evidence does not support a finding that Mr. Rowan entered into his marriage with Ms. Cole in bad faith. Accordingly, this Court should follow the lead of the *Hua* court and reverse the denial of Mr. Rowan's petition.

MPT – February 2014 – Selected Answer 3

In Re Rowan
Appellant's Brief in Support

I. Substantial Evidence Indicates Mr. Rowan Married Ms. Cole in Good Faith

Under 8 U.S.C. § 1186a(c)(4)(B), a conditional permanent resident in the United States who has obtained that conditional residency by marriage to a United States citizen may have the conditions of his residency removed even if the marriage is no longer intact upon a showing that "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." A showing of good faith may be determined by evidence regarding the marital relationship and the parties' intentions therein, such as commingling of financial assets and liabilities, the length of time the parties cohabitated during the marriage and after the alien spouse obtained permanent residence, and "other evidence deemed pertinent by the director." 8 C.F.R. § 216.5(e)(2). Adverse decisions must be based on "specific, cogent reasons" for the denial. *Connor*. On appeal, a denial of the removal of conditional status is judged by the substantial evidence standard, under which the Court must affirm the denial if "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." *Id.*

A. The Substantial Weight of the Evidence Indicates that Mr. Rowan's Marriage to Ms. Cole was entered into in Good Faith

In the case at hand, there is no substantial evidence to support the immigration officer's decision to deny Mr. Rowan's I-751 petition to remove his conditional status. Franklin courts have previously held that where an applicant makes a showing that he entered into the marriage following an actual courtship, frequently communicated with the citizen spouse when they were apart, maintained joint bank accounts and insurance policies, filed joint tax returns, commingled their funds in a joint bank account, incurred debt together, and that the marriage ended through no fault of the applicant spouse, the substantial weight of the evidence does not support a denial of conditional status. *Hua*. The applicant's burden is satisfied "if [he] intended to establish a life with [his] spouse at the time [he] married [her]." *Id.* This holds true even if one of the factors involved in the applicant's decision to marry was securing an immigration benefit. *Id.* Mr., Rowan and Ms. Cole met while Ms. Cole was studying abroad in the UK. Mr. Rowan described his first meeting with Ms. Cole as "love at first sight" on his part. Their courtship was brief, but the couple lived together for

some time before they were married, and remained living together in the UK for six months before deciding to move to the US. While Mr. Rowan might have recognized the potential benefits of moving to the US, even contacting the Franklin City university library, it was in fact Ms. Cole who suggested the move based on a career opportunity she was offered. It was her career, and not Mr. Rowan's desires, that compelled the move to the United States.

There was clear evidence that Mr. Rowan and Ms. Cole intended to establish a life together following their move to the US. The couple entered into a two-year lease, shared living expenses, co-signed loan documents for a new car for Ms. Cole, had each other named as next of kin on their health insurance policies, and filed joint tax returns for the two years of their marriage. There are even indications, based on the testimony of George Miller, that the couple was even discussing buying a home together.

Such documentary evidence is precisely the kind of evidence that indicates the existence of a valid marriage. 8 C.F.R. § 216.5 specifically names combining financial assets and liabilities. Similarly, *Hua* cites the existence of almost identical documentary evidence as sufficient to establish legitimate marital intent. Mr. Rowan's case may be distinguished from the negative decision in *Connor* affirming denial of the removal of conditional status because in *Connor*, Connor presented only an unsigned lease and applications for life insurance and a car purchase, which did not indicate that those financial liabilities and assets were actually entered into. There was a joint bank account and tax return in *Connor*, but absent the additional documentary evidence presented by Mr. Rowan, there was insufficient evidence to indicate a valid union, and additionally, Connor presented other reasons to the immigration officer in his case why Connor's trustworthiness and intentions might be in question. In social terms, the couple lived together for six months in the UK after the marriage, and continued to do so for almost two years in the US following their move, until Ms. Cole unilaterally decided to take a job in another state. The couple both consistently held each other out as husband and wife, and although they socialized little, it was primarily with Mr., Rowan's friends, who all knew of the marriage and believed enough in its legitimacy to refer to Mr. Rowan as "that old married man." On the other hand, it was Ms. Cole's colleagues who did not even know she was married, indicating that, if anything, Mr. Rowan placed more weight in his relationship with Ms. Cole than she did. Additionally, there is evidence that Ms. Cole was frequently away from home for work, and that Mr. Rowan "expressed great dissatisfaction with the hours [Ms. Cole] was working and the time [she] spent travelling." *Affidavit of Sarah Cole*. The dissatisfaction by Mr. Rowan with his wife's absence only serves to reinforce the idea that he entered into and expected a valid marriage, wanted to spend time with his wife, and missed her when she was away.

B. Mr. Cole Was Not at Fault for the Termination of the Marriage

When Mr. Rowan elected not to leave his secure job in Franklin and follow her, it was Ms. Cole who ended the marriage. Ms. Cole unilaterally accepted a position in another state, knowing that her husband did not wish to move and that she intended to do so unless "he could give her a good reason to stay," despite the fact that Mr. Rowan had a secure job in Franklin, and that Ms. Cole had an offer from Franklin State University. Apparently their marriage was not a good enough reason for Ms. Cole, because she opted to take the job and leave. When Mr. Rowan decided not to follow her, she filed for divorce and threatened to "fight his effort to stay in the United States." When Mr. Rowan entered into his marriage, he anticipated a real and binding relationship. When he agreed to move to the US for his wife's career, regardless of any interest on his part to move there himself, he moved with his wife and took the position at the Franklin City library without any sort of indication from his wife that she might desire to move. The situation in Mr. Rowan's case is somewhat analogous to the situation in *Hua*. At the time of the marriage, Hua did not know her husband was having an affair, and did not anticipate such an event intervening in their relationship. Likewise, Mr. Rowan did not expect his wife to move to another state without his agreement, and had no knowledge of any such plan before the marriage. His wife's subsequent decision to file for divorce when he decided not to leave his job in Franklin and join her in Olympia, where his prospects were uncertain and he was unable to find a comparable position despite a diligent search, was a unilateral act. She chose to move. She chose not to involve her husband in her decisions. She chose to immediately file for divorce upon his refusal to move with her despite the existence of alternative options, such as a long-distance relationship, counselling, communication, or compromise. Mr. Rowan cannot be penalized for his wife's decision to leave the state and her subsequent decision to end the marriage when he disagreed with her, otherwise a citizen spouse would practically be able to hold an applicant spouse hostage until his conditional status was removed.

III. Mr. Cole Did Not Provide the Immigration Officer with any "Specific, Cogent Reasons" to Deny His Application

This case is highly distinguishable from the negative decision in *Connor*. In that case, the immigration officer cited sufficient "specific, cogent reasons" why Mr. Connor's application was denied. Namely, Mr. Connor's failure to

disclose the existence of his children with another woman in his application or interview, his immediate move to Alaska, and his lack of documentary evidence indicating a legitimate marriage, all indicating deception or fraudulent intent. Mr. Rowan has here presented no such evidence. In fact, he has produced substantial documentary evidence, as well as evidence of clear good faith intent to enter into and maintain a valid marriage, and the marriage ended through no fault of Mr. Rowan.