

**MULTISTATE PERFORMANCE TEST  
FEBRUARY 2014**

The MPT Question administered by the State Board of Law Examiners for the February 2014 Maryland bar examination was *In re Rowan*. Two representative good answers selected by the Board are included here, beginning at page 2.

The National Conference of Bar Examiners (NCBE) publishes the MPT Question and the “Point Sheet” describing the issues and the discussion expected in a successful response to the MPT Question. The “point sheet” is analogous to the Board’s Analysis prepared by the State Board of Law Examiners for each of the essay questions.

The NCBE does not permit the Board to publish the MPT Question or the “point sheet” on the Board’s website. However, the NCBE does offer the MPT Question and “point sheet” for sale on its website.

**Materials for an unsuccessful applicant:** An applicant who was unsuccessful on the February 2014 Maryland bar examination may obtain a copy of the MPT Question, his or her MPT answer, representative good answers selected by the Board, and the “point sheet” for the February 2014 MPT Question administered as a component of the Maryland bar examination. This material is provided to each unsuccessful applicant who requests, in writing, a copy of their answers in accordance with instructions mailed with the results of the bar examination. The deadline for an unsuccessful applicant to request this material is July 2, 2014.

**Materials for anyone other than an unsuccessful applicant:** Anyone else may obtain the MPT Question and the “point sheet” only by purchasing them at the NCBE Online Store.

Use the following link to access the NCBE Online Store: [www.ncbex2.org/catalog/](http://www.ncbex2.org/catalog/)

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**REPRESENTATIVE ANSWER 1**

8 USC § 1186(a) requires joint filing of petition to remove a condition on permanent residence unless an applicant is granted a hardship waiver. A hardship waiver requires that the applicant show that a marriage was entered into in good faith and was not at fault for failure to file jointly. *Id.* The applicant must provide sufficient evidence to support the showing of good faith by a preponderance of the evidence. *Connor v. Chertoff*. Further, a court must affirm the denial 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. *Connor v. Chertoff*.

I. The totality of evidence supports Mr. Rowan's showing of good faith intent by a preponderance of the evidence.

To show a good faith marriage, the applicant must show the subjective intent of the parties to establish a life together. *Connor v. Chertoff*. Under 8 CFR § 216.5(e)(2), in evaluating the application, an officer may evaluate such evidence as documentation relating to the degree to which financial assets and liabilities of the parties were combined, documentation concerning the length of time during which the parties cohabited after marriage and after alien obtained permanent residence, birth certificates of children born of marriage and other evidence. In *Connor v. Chertoff*, the court notes specifically the key considerations of actions of the parties after marriage that bear on intent at the time of marriage, documentation showing financial interdependence, and testimony about the courtship and wedding. *Id.*

In this case, Mr. Rowan and Ms. Cole were cohabiting during the entirety of their marriage, and even prior to marriage, for roughly two and a half years. Mr. Rowan protested the sporadic times of separation due to Ms. Cole's work. He further held himself and Ms. Cole out to his friends as husband and wife, as supported by Mr. Miller and Ms. Sperling's testimony. Mr. Rowan also presented evidence of joint entering into long-term financial commitments. The couple jointly filed tax returns for two years prior to divorce in 2011 and 2012. The couple also jointly leased a property for two years, the duration of which has not yet run, and jointly signed a promissory note for a car.

In *Hua v. Napolitano*, the court remanded a case where a hardship waiver application was denied on several bases, including a short period of cohabitation after marriage due to extramarital affairs and application for permanent residence two weeks after marriage. These were insufficient to show bad faith in entering the marriage because the court must consider the totality of the evidence, and evidence of a particularly long courtship tended to outweigh actions after marriage. In Mr. Rowan's case, however, although courtship with Ms. Cole was one month, the parties cohabited for two and a half years. Mr. Rowan protested to times of separation, about 7 months, due to Ms. Cole's work.

In *Hua v. Napolitano*, the court also noted that marriage shortly prior to visa expiration was insufficient to negate marital intent. In this case, the parties were in fact married outside of the United States, and Mr. Rowan applied for conditional residency 5 months later, after Ms. Cole's expressed desire to move to the United States. Further, although Mr. Rowan wanted to come to Franklin to work at the Franklin University prior to his marriage to Ms. Cole, the two ultimately

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moved to the United States at Ms. Cole's suggestion for Ms. Cole's career, and without so much as a job offer on Mr. Rowan's part. Given their extensive cohabitation and entering into long-term financial commitments together, both parties further demonstrated a commitment and intent to create a life together in the long-term.

As such, the totality of the evidence shows that Mr. Rowan's marriage was based on the good faith intent of the parties to create a life together, and his application for hardship waiver should be granted.

II. No substantial evidence supports the denial of Mr. Rowan's application for lack of credibility.

A denial based on applicant's lack of credibility must be for specific, cogent reasons. In *Connor v. Chertoff*, the court upheld a denial of a hardship waiver on the basis of applicant Connor's lack of credibility. The record showed that Mr. Connor was the only witness at his hearing, and that he failed to give full disclosure as to relevant facts about his life before and after marriage. He also provided documentation such as life insurance that had in fact not been filed. The inconsistencies in documentary evidence and lack of corroborating testimony ultimately resulted in denial of Connor's application. Mr. Connor's only witness was a nurse without personal knowledge of the parties.

There is no such evidence of bad faith on Mr. Rowan's part here, and he has provided extensive information regarding relevant life facts and documentation pertinent to marital intent. Mr. Rowan's presentation of the relevant lease, tax returns, and promissory note and the testimony of two witnesses who are familiar with and friends with the former spouses corroborates the facts regarding the duration and nature of the parties' relationship and marriage.

A court may also consider affidavits in supporting a finding of good faith or lack of it. In *Connor v. Chertoff*, the court explains that while the affidavit may contain opinion testimony, the affidavit also contains relevant factual observations based on first hand observation. The applicant's spouse in that case submitted an affidavit showing Connor's lack of marital intent by Connor's failure to spend time at the marital residence, except when Connor needed money. In this case, Ms. Cole's affidavit provides further observations as to the marriage, including the long duration of the relationship (2 and a half years).

Thus, because Mr. Rowan provided sufficient documentation and his testimony is corroborated by both Ms. Cole's affidavit and the testimony of two other people both having knowledge of the former spouses, the denial of the application for hardship waiver cannot be upheld based on lack of credibility.

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**REPRESENTATIVE ANSWER 2**

**PERSUASIVE BRIEF**

Caption: [Omitted]

Statement of Facts [Omitted]

Legal Argument:

The petitioner has shown that he entered his marriage with the intention of building a life together.

Your honor, the petitioner qualifies for the hardship waiver per 8 USC 1186(a)(4) – because his marriage was entered into in good faith. In considering the standard of good faith, per 8 CFR 216.5, the evidence examined includes financial assets and liabilities of parties, cohabitation of parties after marriage, and other pertinent evidence.

The petitioner, William Rowan met Cole when in University in the UK. It was love at first sight he asked her out several times before she agreed. He proposed to her and shortly after they moved in together and she agreed. They lived together before moving to Franklin City. It was actually Cole (his ex-wife) that suggested they move to the United States. He moved down here with Cole without any job offers, after her fellowship ended in May 2011. They got an apartment together, signed a 2 year lease, got a loan for a new car for Cole that Rowan co-signed on.

For Rowan's hardship waiver under 1186(a) to be approved, he needs to show that he intended to build a life with Cole. Cole did the above things with Cole to show he was building a life together. Cole's friends also have testified that they held themselves out to be a couple. Like in this case, it was Cole that asked for the divorce not Rowan. They lived together for 30 months after getting married in December 2010. Unlike in Connor, Rowan has shown that friends can corroborate his testimony that they were a couple.

Under the substantial evidence standard, determination for waiver must be based on specific, cogent reasons, and not on substitute personal conjecture or inference by the immigration judge or Board of Immigration Appeals. Rowan has shown that he courted Cole for a short period of time, which like in Hua, is not dispositive of bad faith. They held leases together, car payments, paid taxes as a couple and planned for a future together, even though no children together.

Like in Hua, when the husband asked for divorce, Cole asked Rowan for a divorce when he refused to go to Olympia with Cole, because he had not found a job yet. He was not the one that wanted out of the marriage.

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When this substantial evidence is looked at as a whole, the evidence presented met and satisfied “good faith” marriage requirement for eligibility under 8 USC 1186(a) and therefore the immigration officers decision should be reversed and Rowan’s petition granted.