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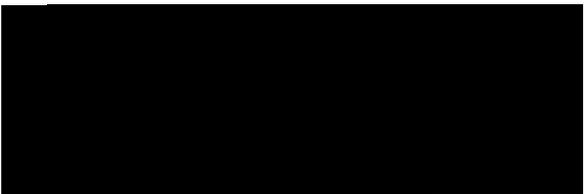
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
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Office: VERMONT SERVICE CENTER

Date: **MAY 14 2008**

IN RE: Petitioner:



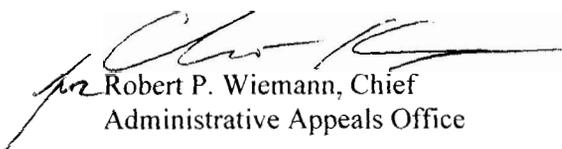
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, 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 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 denied the petition finding that the petitioner failed to establish that she resided with her spouse, that she was battered or subjected to extreme cruelty by her spouse during their marriage, and that she entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

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, 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 further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

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

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated 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.

* * *

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

(v) *Good moral character*. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Kenya who was admitted to the United States on January 28, 2001 as a nonimmigrant visitor (B-2). On November 24, 2003, the petitioner married T-S-¹ a United States citizen, in Rhode Island. On March 13, 2003, the petitioner filed a Form I-589, Application for Asylum. In a decision dated August 30, 2005, the petitioner was found to be prohibited from filing for asylum because she failed to file her application in a timely manner and her case was referred to an immigration judge. On September 30, 2005, Citizenship and Immigration Services (CIS) served a Notice to Appear (NTA) on the petitioner charging her as removable under section 237(a)(1)(B) of the Act for remaining in the United States beyond her period of lawful admission. She remains in proceedings. The record also contains an unadjudicated Form I-130, Petition for Alien Relative, filed on the petitioner's behalf by T-S- on February 6, 2004.

The petitioner filed the instant Form I-360 on August 22, 2006. The director issued a Request for Evidence (RFE) on August 31, 2006 for additional evidence to establish that the petitioner was a person of good moral character and that she married her spouse in good faith. The petitioner, through counsel, timely responded to the RFE on October 24, 2006. The director issued a second RFE on April 16, 2007 for further evidence to establish that the petitioner resided with her spouse, entered into her marriage in good faith, and that she or her children were battered or subjected to extreme cruelty by her citizen spouse during their marriage. The petitioner, through counsel, timely responded to the RFE on June 11, 2007 and requested additional time to respond. On July 18, 2007, the director issued a Notice of Intent to Deny (NOID) the petition which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish that she resided with her spouse, that she or her children were battered or subjected to extreme cruelty by her citizen spouse during their marriage, and that she entered into her marriage in good faith. The petitioner, through counsel, timely responded to the NOID on August 20, 2007. After considering the evidence contained in the record, the director denied the petition on September 19, 2007 on the grounds cited in the NOID.

The petitioner, through counsel, submits a timely appeal, filed on October 19, 2007 and argues that the petitioner meets all of the requirements to establish eligibility. In support of the appeal, the petitioner submits a new personal statement, statements from her acquaintances, and copies of documents that were already contained in the record. As it relates to the new evidence submitted on appeal, the petitioner provides no explanation or documentation of why the evidence submitted on appeal was not available for submission below. As the record demonstrates that the petitioner was properly notified of the deficiencies in the record and afforded the opportunity to respond, we will not accept the evidence submitted by the petitioner on appeal. In instances such as this one, where a petitioner has been put on

¹ Name withheld to protect individual's identity.

notice of deficiencies in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). Accordingly, the AAO need not and will not consider the evidence submitted on appeal. As will be discussed, upon review, we concur with the findings of the director. The petitioner has failed to overcome these findings on appeal.

Residence

On the Form I-360, the petitioner indicated that she resided with her spouse from November 2003 until April 2005 and that she last resided with her spouse at [REDACTED] in Lowell, Massachusetts. However, at the time of filing, the petitioner submitted no testimonial evidence, such as the specific dates and addresses where they resided together, a description of their home, and their shared possessions, or documentary evidence such as a lease, to establish that she resided with her spouse. [REDACTED], a friend of the petitioner, indicated in her statement that she “visited [the petitioner] at her home,” but did not provide any specific details about the petitioner’s residence with her spouse, such as their address or dates of joint residence.

In response to the director’s initial RFE, the petitioner submitted a copy of her 2004 state and federal income tax returns and copies of checks written from her joint account with her spouse at Digital Federal Credit Union (DFCU). The documents all listed the petitioner’s address as a post office box in Lowell, Massachusetts. In response to the director’s second RFE and NOID, the petitioner submitted additional documentation that contained the post office address, but not the address indicated on the Form I-360.

Although the petitioner submitted no personal testimony regarding her claimed residence with her spouse, the psychological evaluation prepared by [REDACTED] provides some details relevant to the petitioner’s residence with her spouse. The details provided, however, contradict the petitioner’s claims on the Form I-360 and other evidence contained in the record. Specifically, contrary to the petitioner’s claim on the Form I-360 that she began residing with her spouse in November 2003, during her evaluation with [REDACTED] the petitioner reported that T-S- moved into her apartment in August 2003. [REDACTED] further writes:

“After he moved in,” [the petitioner] says, [t]hen we decided to make it official.” [T-S-] proposed to her in October, one night when they went out for dinner together, and gave her a ring, she reports.

If the information provided by the petitioner to [REDACTED] during the evaluation is accepted, then it also contradicts the information contained on the petitioner’s marriage license and on the petitioner’s and T-S-’s Forms G-325A, Biographic Information. On the petitioner’s marriage license, signed by the petitioner and T-S- on November 24, 2003, the petitioner listed her address as [REDACTED] in Lowell, Massachusetts and T-S- listed his address as [REDACTED] in Jefferson,

Massachusetts. These addresses are similarly listed on the petitioner's and T-S-'s Forms G-325A, signed on December 22, 2003. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Given the lack of testimonial and documentary evidence regarding the petitioner's residence with her spouse and the conflicting evidence contained in the record, the petitioner has failed to establish that she resided with her spouse, as required by 204(a)(1)(A)(iii)(II)(dd) of the Act.²

Battery or Extreme Cruelty

In her personal statement submitted at the time of filing, the petitioner stated that after her marriage, T-S- "began to drink all the time in front of [her]," that if she argued with him about his drinking, he "would become angry and say he would report [her] to INS," and that he cancelled "appointments with Immigration." The record, however, contains evidence that contradicts the petitioner's claims regarding being threatened with her immigration status and T-S- canceling his appointments. Specifically, the record contains two letters from Alfred B. Taylor, the attorney who represented the petitioner and T-S- for the filing of the Form I-130. In his first letter, dated July 2, 2004, Mr. Taylor requests that the petitioner's and T-S-'s interview be rescheduled due to "unforeseen circumstances." Mr. Taylor's letter was written nearly one week prior to the scheduled interview date. The second letter, dated February 24, 2005, requests that the interview be rescheduled "due to ill health." Attached to the letter was a document from the Saints Memorial Medical Center, dated February 23, 2005, which indicated that the *petitioner* had injured her lower back. As such, the petitioner's claims regarding her spouse's actions in this regard lack credibility.

The petitioner also generally stated that her spouse would "scream and yell at [her] and the children," that he would knock food off of the table when he was angry, and claimed that they would fight over money for drinking. The petitioner, however, provided no description of any particular incident or further details regarding any of these claims. Finally, the petitioner describes being "struck" in the face one time in the winter of 2004 and being forced to have sexual relations with T-S- on an unidentified night.

In the psychological evaluation, [REDACTED] describes T-S- as being "engaged in a number of different

² As previously indicated, we will not consider the additional testimonial evidence provided on appeal. However, even if considered, the petitioner's testimony fails to resolve the inconsistencies noted. Rather, her statement reiterates the sequence of events described in the psychological evaluation; that T-S- moved in with her prior to their marriage. Further, the brief and general statements submitted on the petitioner's behalf on appeal would not be sufficient to establish her claim of residence.

abusive behaviors . . . , a systematic pattern of abusive and controlling behaviors . . . [and] verbally and emotionally abusive to [the petitioner] and her children.” [REDACTED] reports that T-S- stopped working, demanded that the petitioner give him money, did not contribute to the household expenses, was “disrespectful” to the petitioner and blamed her for their problems. The evaluation also briefly describes the two incidents noted by the petitioner in her statement; the incident where she was struck in the face by T-S- and the incident where she claims he forced her to have sexual relations.

The general claims contained in the petitioner’s statement and in the psychological evaluation regarding T-S-’s abuse of alcohol, his yelling and screaming, calling the petitioner and her children names, and his failure to contribute to the household expenses are not sufficient to establish that the petitioner or her children were subjected to extreme cruelty. Neither the statement nor the evaluation contains any probative details which describe any specific event thoroughly. As it relates to a claim of a battery, the petitioner only generally describes the incident where she was struck in the face and the unspecified time where she was forced to have sexual relations. The psychological evaluation also only generally references both of these incidents.

In addition, in his decision, the director determined that the evaluation lacked sufficient weight because it was obtained after the director’s RFE and more than two years after the petitioner and T-S- separated. We concur with this determination. As part of her evaluation, [REDACTED] noted, “many individuals involved in immigration-related situations would not ever choose to meet with a mental health professional on their own initiative,” and only agree to do so upon the advice of counsel. Dr. [REDACTED] explained that, depending upon an individual’s socio-economic and/or cultural background, treatment may be too expensive, an unfamiliar concept or practice in the individual’s culture, not thought to be useful, viewed with fear and suspicion, difficult to access because it violates social norms, or is thought of as necessary only for those who are “crazy” or are unable to function in daily life. [REDACTED] then concluded, “[t]he fact that the client’s legal situation has motivated the evaluation should by no means be interpreted to mean that the client is not experiencing psychological suffering or is not in need of treatment.” While we do not dispute [REDACTED]’s general observations and assumptions regarding why or when individuals may or may not choose to be evaluated by a mental health professional, the record contains no evidence which demonstrates the petitioner’s timing or reason for seeking professional help in this case. Neither the petitioner nor [REDACTED] have provided any explanation regarding why the petitioner waited for nearly one year after filing her Form I-360 to seek her psychological evaluation.

The remaining testimonial evidence, which consists of the statement from [REDACTED], indicates that after their marriage, T-S- “started to come home drunk” and would scream and yell at the children. [REDACTED] describes an incident on a Sunday afternoon in 2004 when T-S- was “hung over,” yelled at the petitioner’s son and left the residence. [REDACTED] describes a second incident in which T-S- demanded money from the petitioner and when she refused to give him any, T-S- began swearing at the petitioner. As described, [REDACTED] makes no allegation regarding battery or threatened physical abuse against the petitioner or her children. In addition, [REDACTED]’s general

claims that T-S- would get drunk and scream and yell at the petitioner and her children is not sufficient to establish a claim of extreme cruelty. Although [REDACTED] does describe two incidents that she actually witnessed, the behavior described does not demonstrate that T-S-'s behavior rose to the level of extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

Accordingly, the petitioner failed to establish that she or her children were battered or subjected to extreme cruelty by her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In the statement provided by the petitioner at the time of filing, the petitioner failed to provide any probative details regarding her good faith intent in marrying her spouse. Rather, she generally indicated that when they were dating and got engaged, T-S- "seemed very nice, and [she] fell in love with him." The petitioner provided no description of their courtship, shared events, or other details to establish that she intended to share a life with her spouse at the time of their marriage. The information contained in the psychological evaluation is similarly lacking. For instance, the evaluation indicates that after meeting at a birthday party of a mutual friend in February 2003, the petitioner and T-S- exchanged telephone numbers and started talking on the phone "maybe three times a week." The evaluation generally describes their first date at a restaurant and indicates that thereafter they would meet "every Sunday" for lunch or dinner. The evaluation states that after three months of dating, the petitioner introduced T-S- to her children and then indicates that in August 2003 they moved in together. Although the evaluation also indicates that T-S- proposed to the petitioner in October 2003, that the petitioner accepted his proposal, and they got married in November, the evaluation does not describe the petitioner's feelings for her spouse or reasons for marrying him. Instead, the evaluation broadly states that the petitioner "entered her relationship with [T-S-] on good faith, and hoped to build a life together with him." Similarly, the statement provided on the petitioner's behalf by [REDACTED] generally indicated that the petitioner and her spouse met at a birthday party thrown by [REDACTED] Ms. [REDACTED] further states that they would visit at each other's homes. She does not, however, provide any probative details regarding the petitioner's relationship with her spouse and their interactions with each other, other than as it relates to the claimed abuse.

As documentary evidence, the petitioner submitted materials concerning the joint filing of T-S-'s and her 2004 federal and state taxes, the petitioner's life insurance policy listing T-S- and her children as beneficiaries, photocopies of carbon copies of four checks, and 13 uncaptioned photographs. The petitioner obtained her life insurance policy in August 2004, nearly nine months after her marriage. Although indicating that the petitioner and her spouse had a joint bank account, the checks, which were all dated in March 2004, do not demonstrate when the account was opened and, more importantly, that both the petitioner and her spouse had access to and use of the account. In addition, the photocopied carbon copies of the checks all obscure the signature of the payor. Of the 13 photographs submitted by

the petitioner, nearly half appear to have been taken on the petitioner's wedding day. The remaining photographs, while evidence that the petitioner and her spouse were together at a particular place and time, are of little probative value in establishing her good faith intent. The petitioner fails to describe the photographs, the date, time and importance of the events, or to provide any other information about the photographs to establish their relevance to her claim of a good faith marriage.

As discussed above, the documentary evidence contained in the record and the testimonial evidence submitted by the petitioner and on her behalf is insufficient to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

Beyond the decision of the director, we find the petitioner has failed to establish that she is a person of good moral character. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by a police clearance or state criminal background check from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition.

In his August 31, 2006 RFE, the director requested that the petitioner submit further evidence to establish her good moral character, including an affidavit from the petitioner and police clearances. The director further noted that if the petitioner's police clearance was researched "by name only, [the petitioner] must supply the law enforcement agency with all aliases you have used, including maiden and/or married name(s), if applicable."

In response to the director's RFE, the petitioner submitted clearances from the Commonwealth of Massachusetts, Executive Office of Public Safety, Criminal History Systems Board (CHSB), Criminal Justice Information Service, which indicated that a search of the CHSB database revealed that there was no record for the petitioner. The clearances provided by the petitioner were based upon the names "[REDACTED]" and "[REDACTED]" only.

However, in addition to the above listed names, the record reflects that the petitioner has also used the following names:

- [REDACTED] (listed on the petitioner's divorce certificate; [REDACTED] is also listed on the petitioner's Form G-325A under "all other names used");

- [REDACTED] (listed on the petitioner's Form I-589, Form I-130, Form G-325A); and
- [REDACTED] (listed on the petitioner's marriage license);

Moreover, the petitioner has failed to provide any statement regarding her moral character, such as whether she has ever been arrested, charged, or convicted of any crime, had involvement with law enforcement or any other information relevant to her claim that she is a person of good moral character. We, therefore, withdraw the director's decision on this matter and find that the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petition will be denied for the reasons stated above, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.