



U.S. Citizenship  
and Immigration  
Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**

B9



FILE:

EAC 03 258 52704

Office: VERMONT SERVICE CENTER

Date: **APR 07 2006**

IN RE:

Petitioner:



PETITION: Petition for Special Immigrant Battered 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, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Germany who seeks classification as a special immigrant pursuant to 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 subjected to battery or extreme cruelty by her United States citizen spouse. The record shows that the petitioner last entered the United States on January 6, 1994 as a nonimmigrant student (F-1). On January 16, 1999, the petitioner attempted to enter the United States from the Virgin Islands using a fraudulent resident alien card and was placed into removal proceedings pursuant to section 237(a)(1) of the Act as an alien who had failed to maintain the nonimmigrant status under which she was previously admitted to the United States. On May 23, 2000, the petitioner pled guilty and was convicted of fraud and misuse of documents in violation of 18 U.S.C. § 1546(a).

On December 3, 2000, the petitioner married Sean Cooke, a United States citizen. On March 13, 2001, Mr. ██████ filed a Form I-130 on the petitioner's behalf. On October 12, 2001, the former Immigration and Naturalization Service issued a Notice of Intent to Deny (NOID) the Form I-130 because Mr. ██████ had not established eligibility for the bona fide marriage exemption from the restriction on a visa petition based on a marriage that occurred while the beneficiary was in removal proceedings pursuant to section 204(g) of the Act. Mr. ██████ responded to the NOID with additional evidence and INS approved the Form I-130 on December 13, 2001. The petitioner filed her Form I-360 on September 17, 2003. On October 14, 2004, the Executive Office for Immigration Review administratively closed the petitioner's removal proceedings.

On February 2, 2005, the director issued a NOID the petitioner's Form I-360 because the record did not demonstrate that the petitioner was a person of good moral character due to her conviction for a crime involving moral turpitude. The NOID informed the petitioner that she could be found to be a person of good moral character despite her conviction if she could demonstrate a connection between her conviction and her husband's battery or extreme cruelty. The petitioner submitted additional evidence in response to the NOID. Because the additional evidence did not establish the requisite connection between the petitioner's conviction and her abuse, the director denied the petition on May 11, 2005.

As we agree with the director's determination that the petitioner met all the other statutory eligibility criteria for classification under section 204(a)(1)(A)(iii) of the Act, the only issue on appeal is whether the petitioner is a person of good moral character. On appeal, counsel insists that the petitioner established that, but for her husband's abuse, she would not have committed a crime and that the director narrowly construed the term "connection," contrary to Citizenship and Immigration Services (CIS) policy. The statute, regulations, relevant case law and CIS policy do not support counsel's claims. For the reasons discussed below, we affirm the director's determination that the petitioner has been convicted of a crime involving moral turpitude, is statutorily barred from being found a person of good moral character and is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

*The Relevant Statutory Provisions, Regulations and Caselaw Concerning Good Moral Character and Crimes Involving Moral Turpitude in Self-Petitions Filed Under Section 204(a)(1)(A)(iii) of the Act*

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 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).

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

\* \* \*

- (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. . . . 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.

The regulation's designation of a three-year period preceding the filing of the petition does not limit the temporal scope of CIS' inquiry into the petitioner's good moral character. The agency may investigate the self-petitioner's character beyond the three-year period when there is reason to believe that the self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996); Memo. from William R. Yates, CIS Associate Dir. Operations, *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, 2, (Jan. 19, 2005).

The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further explicates the good moral character requirement and states, in pertinent part:

*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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

Section 101(f) of the Act states, in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

\* \* \*

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraphs (A) and (B) of section 1182(a)(2) of this title [section 212(a)(2) of the Act] . . . if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period . . . .

Section 212(a)(2)(A) of the Act includes, “any alien convicted of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.” Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

The term “crime involving moral turpitude” is not defined in the Act or the regulations, but has been part of the immigration laws since 1891. *Jordan v. De George*, 341 U.S. 223, 229 (1951) (noting that the term first appeared in the Act of March 3, 1891, 26 Stat. 1084). The Board of Immigration Appeals (BIA) has explained that moral turpitude “refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Matter of Franklin*, 20 I&N Dec 867,868 (BIA 1994), *aff'd*, 72 F.3d 571 (8<sup>th</sup> Cir. 1995). The BIA has also stated that “[t]he test to determine if a crime involves moral turpitude is whether the act is accompanied by a vicious motive or a corrupt mind. An evil or malicious intent is said to be the essence of moral turpitude.” *Matter of Flores*, 17 I&N Dec. 225, 227 (BIA 1980) (internal citations omitted).

When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). If the statute defines a crime “in which turpitude necessarily inheres,” then a conviction under that statute constitutes a crime involving moral turpitude. *Id.*

Offenses involving fraud fall squarely within the jurisprudential definition of crimes involving moral turpitude. As the Supreme Court stated in *De George*,

Whatever else the phrase “crime involving moral turpitude” may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . The phrase “crime involving moral turpitude” has without exception been construed to embrace fraudulent conduct.

*De George*, 341 U.S. at 232. The federal courts of appeals and the BIA repeatedly cite *De George* as authority for the principle that crimes of which fraud is an element necessarily involve moral turpitude. See e.g. *Padilla v. Gonzales*, 397 F.3d 1016, 1020 (7<sup>th</sup> Cir. 2005) (“[I]t is settled that ‘crimes in which fraud [is] an ingredient’ involve moral turpitude,” quoting *De George*.), *Matter of Adetiba*, 20 I&N Dec. 506, 508 (BIA 1992) (“Fraud, as a general rule, has been held to involve moral turpitude.”), *Matter of Correa-Garces*, 20 I&N Dec. 451, 454 (BIA 1992) (“Crimes involving fraud are considered to be crimes involving moral turpitude.”); *Flores*, 17 I&N Dec. at 228 (quoting the above cited passage of *De George* as the Supreme Court’s definition of moral turpitude). Indeed, even when fraud is not an explicit statutory element of an offense, a crime will still be found to involve moral turpitude if fraud is inherent to the proscribed offense. *Flores*, 17 I&N Dec. at 228; *Matter of Bart*, 20 I&N Dec. 436, 437-438.

In this case, the record shows that on March 23, 2000, the petitioner was convicted of fraud and misuse of documents in violation of 18 U.S.C. § 1546(a), which states, in pertinent part:

1546. Fraud and misuse of visas, permits, and other documents

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained

\* \* \*

[s]hall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism . . .), 20 years (if the offense was committed to facilitate a drug trafficking crime . . .), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

The petitioner pled guilty to a one-count information, which states:

On or about January 16, 1999, at St. Thomas, District of the Virgin Islands, the defendant, [the petitioner], did possess, use, and attempt to use a document prescribed by statute and regulation for entry into and as evidence of authorized stay and employment in the United States, that is, a counterfeited Resident Alien Card, knowing such document to have been counterfeited and otherwise unlawfully obtained; [i]n violation of Title 18, United States Code, Section 1546(a).

The petitioner's plea agreement states that the petitioner "admits that (s)he is in fact guilty of this offense and that (s)he acted knowingly and intentionally."

On September 1, 2000, the U.S. District Court of Connecticut sentenced the petitioner to two years of probation on condition that she complete 72 hours of community service, participate in a mental health evaluation and any treatment and counseling directed by the U.S. Probation Office, pay a special assessment of \$100, and not reenter the United States if deported without permission and without notifying the U.S. Probation Office. With her NOID response, the petitioner submitted evidence that she was discharged from probation on August 30, 2002, completed her court-ordered community service, participated in family therapy, and has committed no other offenses. In the cover letter accompanying the NOID response, counsel suggests that these facts, combined with the petitioner's light sentence, warrant an exercise of discretion to deem the petitioner a person of good moral character.

While we are mindful of these facts, it is the "inherent nature of the crime as defined by statute and interpreted by the courts, and as limited and described by the record of conviction, which determines whether the offense is one involving moral turpitude." *Bart*, 20 I&N Dec. at 437, *Short*, 20 I&N Dec. 136, 137 (BIA 1989). *See also Matter of Serna*, 20 I&N Dec. 579, 581 ("[N]either the seriousness of the offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude.") Fraud is a statutory element of the crime of which the petitioner was convicted. As discussed above, crimes of which fraud is an element necessarily involve moral turpitude. Consequently, the petitioner's light sentence, her completion of community service, her discharge from probation, and her subsequently clean record are all irrelevant to this determination. Because the petitioner was convicted of a crime involving moral turpitude, we are statutorily barred from finding her to be a person of good moral character pursuant to section 101(f)(3) of the Act.

*The Relevant Exceptions and Discretionary Provision Do Not Apply to the Petitioner's Case*

Section 212(a)(2)(A)(ii) of the Act provides two exceptions to determining that an alien has committed or been convicted of a crime involving moral turpitude, but neither of these exceptions apply to the petitioner. The first exception is for crimes committed by juveniles under the age of 18 and five years prior to their application for immigration benefits. Section 212(a)(2)(A)(ii)(I) of the Act, 8 U.S.C. § 1182 (a)(2)(A)(ii)(I). The petitioner committed the crime when she was 34 years old, two years before her husband filed an I-130 petition on her behalf and four years before she filed this petition. Accordingly, she does not fall within this exception. The second exception applies when the maximum

possible penalty for the crime of which the alien was convicted does not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months. Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182 (a)(2)(A)(ii)(II). Although the petitioner was not sentenced to imprisonment, section 1546(a) of Title 18 of the United States Code, under which the petitioner was convicted, mandates a maximum penalty of ten years imprisonment. Accordingly, the second exception at section 212(a)(2)(A)(ii)(II) also does not apply to the petitioner.

We are also unable to find the petitioner to be a person of good moral character pursuant to section 204(a)(1)(C) of the Act. This section provides CIS with the discretion to find a petitioner to be a person of good moral character if: 1) the petitioner's conviction for a crime involving moral turpitude is waivable for the purposes of determining admissibility or deportability under section 212(a) or section 237(a) of the Act; and 2) the conviction was connected to the alien's battery or subjection to extreme cruelty by his or her U.S. citizen or lawful permanent resident spouse or parent. Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C).

The phrase "connected to the alien's having been battered or subjected to extreme cruelty," as stated in section 204(a)(1)(C) of the Act has not been explicated through regulation. However, CIS policy states:

the evidence should establish that the self-petitioner would not have committed the act or crime in the absence of the battering or extreme cruelty. To meet this evidentiary standard, the evidence submitted must demonstrate:

- The circumstances surrounding the act or conviction, including the relationship of the abuser to, and his/her role in, the act or conviction committed by the self-petitioner; and
- The requisite causal relationship between the act or conviction and the battering or extreme cruelty.

\* \* \*

When determining whether a sufficient connection exists between the alien's disqualifying act or conviction and the battering or extreme cruelty suffered by the alien, the adjudicating officer should consider the full history of the domestic violence in the case, including the need to escape an abusive relationship. The adjudicating officer should consider all credible evidence that is in compliance with 8 U.S.C. § 1367 when making this determination. The credibility and probative value of the evidence submitted by the self-petitioner is a determination left to the discretion of the adjudicating officer.

Memo. of William R. Yates, Assoc. Dir. CIS Operations, *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, 3-4 (Jan. 19, 2005) (hereinafter "Yates Memo").

Although a waiver of inadmissibility due to a conviction for a crime involving moral turpitude is available for self-petitioners under section 212(h)(1)(C) of the Act, the petitioner has not established

that her conviction was connected to her husband's battery or extreme cruelty. In her September 15, 2003 affidavit submitted with her Form I-360, the petitioner states that she began dating Mr. [REDACTED] in the Spring of 1998 and that between June and December of that year, Mr. [REDACTED] frequently accused her of infidelity, called and harassed her at work and once came to the restaurant where she was working and caused a scene. The petitioner explains that she had a violent fight with Mr. [REDACTED] on December 14, 1998 and that afterwards he would not stop calling her at work. On December 24, 1998, the petitioner explains that Mr. [REDACTED] forced his way into her apartment, refused to leave and screamed in her parking lot until the early morning. The petitioner further states:

After that incident, I knew I had to get away from [Mr. [REDACTED]] for a while. I couldn't get any peace from him at home or at work. [On] December 28, 1999<sup>1</sup> I decided I had to get away to St. Thomas of the Virgin Islands. Once there, I realized that in order to come back into the United States, I would have to go through an INS inspection. . . . At this point, I panicked. My student visa had expired and I didn't know how I would return. I had everything in the U.S. and I had to get back in. I approached three individuals on Coki Beach who agreed to help me. They told me to wire \$300.00 Western Union to a New York address and to come back to see them the next day with photographs. We agreed that false documents would be mailed to my hotel room. On January 15, 1999, I received the documents which included a counterfeit social security card with the number [REDACTED] and a counterfeit Resident Alien Card with an A# [REDACTED]. On January 16, 1999, I planned on returning to the U.S. I encountered an INS departure control check at [REDACTED] in St. Thomas. They realized that there was a problem with the green card. Upon further questioning by INS inspectors, I admitted to trying to enter the U.S. illegally and also how I got the false documents. I was taken into custody.

In her March 8, 2005 affidavit submitted in response to the NOID, the petitioner again explains that on December 14, 1998 she had a violent fight with Mr. [REDACTED]. Afterwards, the petitioner reports that Mr. [REDACTED] tried to manipulate her with gifts and flowers, would not stop calling her at work, and screamed in the parking lot of her apartment and refused to leave until the early morning. The petitioner states, "I planned to go away for about ten days. I did not tell Sean I was leaving. I didn't know what he would do. However, after I got there, I did want to try to straighten things out with him, so I called him. We talked a few times. He again acted like nothing happened."

With her NOID response, the petitioner submitted an affidavit from [REDACTED], a former customer of the bar where the petitioner worked in 1998. Mr. [REDACTED] states that Mr. [REDACTED] repeatedly called the petitioner while she was working and that he witnessed one occasion when Mr. [REDACTED] came to the bar and yelled at the petitioner and was "very verbally abusive."

As the director stated, the record indicates that the petitioner left her home in December 1998 to escape from Mr. [REDACTED] abuse, but the evidence does not establish that her criminal conviction was

---

<sup>1</sup> The petitioner appears to have mistakenly stated the year as 1999. The record indicates that these events occurred in December and January of 1998.

connected to Mr. [REDACTED] battery or extreme cruelty. The petitioner does not explain why she felt it was necessary to leave the country to escape from Mr. [REDACTED] rather than fleeing to another town or state. The petitioner also does not state that Mr. [REDACTED] directed, urged her or even suggested that she obtain and use fraudulent documents to re-enter the United States. Instead, the petitioner states that when she called Mr. [REDACTED] from the Virgin Islands, he “acted like nothing happened.” The petitioner does not report, for example, that Mr. [REDACTED] professed his love for her, pleaded with her to return, or threatened to harm her if she did not return. Hence, the record does not demonstrate that Mr. [REDACTED] had any role in the petitioner’s conviction and the evidence does not establish a causal relationship between the petitioner’s conviction and Mr. [REDACTED]’s battery or extreme cruelty.

With the NOID response, counsel submitted documents regarding general characteristics of abused persons, posttraumatic stress disorder (PTSD) in victims of domestic violence, and PTSD and criminal behavior. Counsel cites these documents as support for the petitioner’s case and states:

as a victim of domestic violence, there are common reactions which include reduction in normal decision-making abilities at least, and self-destructive behavior at worst. Research has shown that the symptoms of battered women are consistent with post-traumatic stress disorder. Furthermore, individuals who suffer from post-traumatic stress disorder similarly act outside of his or her [sic] normal scope of behavior. Often they suffer from conduct disorders, have trouble with the law and engage in self-destructive behavior.

Whatever link may or may not exist between domestic violence and PTSD in general, the record does not establish that the petitioner in this case suffered from PTSD due to her husband’s battery or extreme cruelty and that such a condition caused her to commit her crime. To the contrary, the mental health evaluation of the petitioner (conducted on September 25, 2000 pursuant to court order in her criminal case and submitted with her petition) did not diagnose the petitioner with any mental disorders. The evaluation states, “Even though the client does have stressors in her life, it is this counselor’s opinion that at this time she doesn’t need counseling.” While the evaluation indicates that the petitioner did not discuss Mr. [REDACTED]’s abuse with the counselor, the documents regarding PTSD submitted by counsel indicate that an individual suffering from PTSD would exhibit symptoms that a professional counselor would notice. Accordingly, the record does not support counsel’s claim that the petitioner committed her crime because she suffered from PTSD as a result of Mr. [REDACTED]’s abuse.

On appeal, counsel claims that pursuant to CIS policy, the petitioner “need not demonstrate that her desire to return to the U.S. was *created* by the abuse – she needs to demonstrate that *but for the abuse*, she would not have committed the criminal offense” (emphasis in original). According to counsel, “but for the abuse that she suffered, she would not have been in the U.S. Virgin Islands and would not have felt a compulsion to obtain fraudulent documents in order to return.” We disagree. Semantics aside, CIS policy requires the petitioner to demonstrate a “causal relationship” between the abuse and her criminal conduct. Yates Memo. at 3. The record in this case demonstrates a causal connection between the petitioner’s desire to flee from Mr. [REDACTED] but does not demonstrate a causal relationship between

his abuse and her crime. The mere fact that the petitioner's crime occurred after she fled Mr. [REDACTED] and went to the Virgin Islands does not establish the requisite causal connection.

Counsel further claims that the petitioner exhibited a "widely recognized characteristic or symptom of an abusive relationship" when she returned to her abuser after fleeing from him and that the "need to return to an abusive relationship and a need to attempt to reconcile with the abuser are classic symptoms of dependency on the abuser." Even if the petitioner's return to Mr. [REDACTED] reflects her dependency on him and is characteristic of an abusive relationship, her behavior does not establish a causal relationship between her crime and Mr. [REDACTED]'s battery or extreme cruelty. Again, the evidence demonstrates a causal relationship between Mr. [REDACTED]'s abuse and the petitioner's desire to flee from him. The record does not establish, however, a causal connection between the petitioner's specific departure to the Virgin Islands (as opposed to a location within the United States) or her purchase and use of fraudulent documents to return to the United States. The petitioner has not stated, for example, that she had relatives or friends in Saint Thomas or that she had some other credible reason to flee to the Virgin Islands as opposed to another town, city or state within the United States. The petitioner also does not explain, for example, that she was unaware of shelters and other confidential social services in the United States that could have helped her escape from Mr. [REDACTED]'s abuse without leaving the country. Most importantly, the petitioner states that Mr. [REDACTED] "acted like nothing happened" when she called him from the Virgin Islands and the petitioner indicates that Mr. [REDACTED] was not at all involved in her purchase and use of fraudulent documents to return to the United States. Accordingly, the record does not demonstrate that the petitioner's conviction was connected to Mr. [REDACTED]'s battery or extreme cruelty. We are thus barred from finding the petitioner to be a person of good moral character as a matter of discretion pursuant to section 204(a)(1)(C) of the Act.

The record demonstrates that the petitioner was convicted of a crime involving moral turpitude. The relevant statutory exceptions and discretionary provision do not apply to the petitioner's case. She is consequently ineligible for classification as an immigrant under section 204(a)(1)(A)(iii) of the Act and her petition must therefore be denied.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.