

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B9

FILE:

[REDACTED]
EAC 03 042 50059

Office: VERMONT SERVICE CENTER

Date: JAN 22 2009

IN RE:

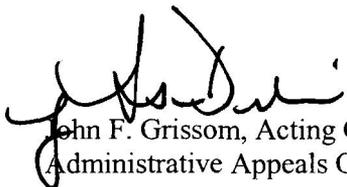
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The service center director revoked approval of 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 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 revoked approval of the petition on the basis of his determination that the petitioner had failed to establish: (1) that his wife subjected him to battery or extreme cruelty; and (2) that he entered into marriage with his wife in good faith.

Counsel submitted a timely appeal on March 2, 2007.

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, 8 U.S.C. § 1154(a)(1)(J) 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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.

* * *

- (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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

* * *

- (ii) *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.

* * *

- (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 of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Haiti who entered the United States, without inspection, on or around July 25, 1998. He filed an application for asylum on June 7, 1999 but withdrew that application on November 8, 2000. He applied for voluntary departure on November 8, 2000; and voluntary departure was granted through March 8, 2001. The petitioner married R-G-¹ a United States citizen, on February 16, 2001 in Orlando, Florida. R-G- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on March 15, 2001. R-G- and the petitioner appeared for an interview in connection with the Form I-130 on June 28, 2001. A notice of intent to deny the Form I-130 was issued on June 30, 2001.

The petitioner filed the instant Form I-360 on November 18, 2002. The director issued a request for additional evidence on July 22, 2003, and the petitioner responded on August 16, 2003. The Form I-360 was approved on February 20, 2004.

The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on May 17, 2004. However, on June 2, 2006 the petitioner was sent a letter informing him that his Form I-360 was under review, and that further information would be forthcoming from the service center. On December 5, 2006, the director issued a notice of his intent to revoke approval of the petition (NOIR), stating that the petitioner's file had been returned to the Vermont Service Center by the Orlando District Office on the basis of that office's determination that there were several issues surrounding the petitioner's Form I-360 meriting revisitation. The NOIR notified the petitioner of the deficiencies contained in the record, and afforded him the opportunity to submit further evidence to

¹ Name withheld to protect individual's identity.

establish that the petitioner had resided with his wife; that the petitioner had been subjected to battery and/or extreme cruelty by R-G-; that the petitioner is a person of good moral character; and that the petitioner married R-G- in good faith.

Counsel responded to the NOIR on January 22, 2007, and submitted additional evidence. After considering the evidence of record, the director revoked approval of the petition on February 23, 2007. Counsel submitted a timely filed appeal on March 2, 2007.²

Battery or Extreme Cruelty

In his statement, which was typed, undated, unsigned, and submitted in response to the director's July 22, 2003 request for additional evidence, the petitioner stated that he married R-G- on February 16, 2000, and that they lived together between April 1999 and April 2002. He stated that "after a few months," he noticed that R-G- was "drinking a lot and gambling quite a bit too"; that she would become violent after drinking, and would beat him and push him against walls; that she called him names; that she told him that, if he called the police, she would frame him for domestic violence; that he was socially isolated at work during their marriage; that R-G- would grab him at work if she saw him talking to anyone; that R-G- abused him in front of co-workers; that he had to change employment because of the abuse; that he became extremely depressed; that he lost his self-worth and esteem; and that, on the day he left their shared apartment, R-G- pushed him to the wall, called him names, threw his clothes outside, destroyed property, and threatened to call the police.

In her response to the director's July 22, 2003 request for additional evidence, counsel submitted an unsigned letter from [REDACTED], a domestic violence assessor. In her December 12, 2002 letter, [REDACTED] states that the petitioner told her that he and R-G- married "about six months after they met." She states that the petitioner also told her that the relationship was very positive while they were dating, but that after they married and began combining their earnings as a family things changed. She says the petitioner told her that R-G- loved to gamble, and that she spent so much of their grocery money on lottery tickers they had difficulty purchasing food. [REDACTED] states that the petitioner told her R-G- has a drinking problem; that R-G- would yell and throw things when he attempted to stop her from drinking or buying lottery tickets; and that, eventually, she threw his clothes out the door and told him not to return. She also states that the petitioner told her that R-G- often threatened to call 911 and accuse the petitioner of domestic violence.

Finding this evidence insufficient, the director stated the following in his December 5, 2006 NOIR:

[T]he additional review of your file reveals that your claims to battery/extreme cruelty are not sufficiently supported by the record. Your statement and the other affidavits in the record do not contain sufficient detail to support your claims.

² The record indicates that, subsequent to the filing of this appeal, the petitioner was the beneficiary of a special immigrant religious worker petition. See WAC 08 136 51701, filed April 14, 2008 and denied October 22, 2008.

Additionally, the counseling evaluation does not contain a diagnosis or prognosis for you. It states that you claim your spouse had a substance abuse problem and this was difficult for you to deal with and resulted in your experiencing depression. Please note that it has been determined that the parameters of extreme cruelty must indicate an intent to control through psychological attacks and/or economic coercion which also includes emotional abuse, humiliation, degradation, and isolation. A pattern of purposeful behavior, directed at achieving compliance from or control over the victim must be demonstrated.

Marital tensions and incompatibilities caused by substance abuse, which then serve to place severe strains on a marriage, and in fact may be the root of the marriage's disintegration, do not, by themselves, constitute extreme cruelty. The evidence provided in the present case does not suggest that the marital difficulties claimed by you were beyond those encountered in many marriages.

The petitioner was then directed to provide additional evidence to show that he was the victim of batter and/or extreme cruelty. However, in her January 17, 2007 response to the director's NOIR, counsel re-submitted, with regard to demonstrating battery and/or extreme cruelty,³ the information that was before the director at the time he issued the NOIR, which had been found insufficient, and stated the following:

To my surprise you are now recalling your decision and trying to withdraw your decision based on no specific reason. . . .

It is not fair to come back to redetermine [sic] his case for no specific reason. He might be considered as a victim of gender discrimination. He has a genuine case of spousal abuse and genuine proof of marriage which is all that you need to approve his case. . . .

The director was not persuaded by counsel's assertions, and revoked approval of the petition. On appeal, counsel submits two additional affidavits, states that the director's decision was "a total abuse of discretion," states that there was "no reason" to revoke approval of the petition, and asserts that the petitioner believes he has been a victim of gender discrimination.

In their March 28, 2007 affidavits, [REDACTED] and [REDACTED] state that they visited the petitioner and R-G- at their home; that they observed R-G- abusing the petitioner and throwing things at him; that they observed R-G- making serious threats of bodily harm; that they observed the petitioner's clothing and personal belongings on the street; and that R-G- and the petitioner "were engaging in verbal and physical fights very often."

³ The affidavits submitted by counsel in response to the NOIR did not address the issue of battery and/or extreme cruelty, and will be discussed later in the decision.

At the outset of its analysis, the AAO notes that the evidence of record contains numerous inconsistencies and discrepancies. For example, the record is unclear as to when the petitioner and R-G- began living together. On the Form I-360, the petitioner stated that he and R-G- shared a residence from April 1999 until September 2002 and, in his statement in support of the Form I-360, the petitioner also states that they lived together at [REDACTED], in Orlando during this entire period of time.

However, on the Form G-325A, Biographic Information, the petitioner states that he only began living at the [REDACTED] address in April 2000. He indicated that before moving to the Rio [REDACTED] address, he had lived at [REDACTED] in Orlando since April 1999. On a Florida Identification Card, issued on June 30, 1999, the petitioner's address is listed as the [REDACTED] residence.⁴ Also, on a Form G-28 submitted by counsel and signed by the petitioner on February 25, 2000, the petitioner listed the [REDACTED] address as his residence. Further, on a Form EOIR-33, Change of Address Form, the petitioner notified the legacy Immigration and Naturalization Service that, in September 1999, he had relocated from one apartment to another at the [REDACTED] address. Finally, on the Form I-589, Application for Asylum and for Withholding of Removal, submitted on June 7, 1999, the petitioner listed his address as the C.R. [REDACTED] residence. It is unclear why, if the petitioner moved to the [REDACTED] address in April 1999, and stayed there until September 2002, he provided conflicting information to USCIS at other points in his immigration processing. The record, therefore, is unclear as to when the petitioner and R-G- began sharing a residence.

Nor is the record clear as to when the petitioner and R-G- first met. According to the Orlando District Office's notice of intent to deny the I-130 petition, the petitioner told the interviewing officer at his June 28, 2001 permanent residency interview that he and R-G- had known each other for one year prior to their February 16, 2001 wedding. However, R-G- told the same interviewing officer that they had met in April 2000. These two accounts conflict with each other, and they both conflict with the petitioner's statements that he and R-G- began living together in April 1999. [REDACTED]'s evaluation obscures the record further: she states that the petitioner told her that he and R-G- were married six months after they met. As the marriage occurred in February 2001, he was in essence telling [REDACTED] that he and R-G- met in August 2000.

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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* The petitioner has failed to explain any of these inconsistencies, which undermines the credibility of his testimony. As [REDACTED]'s evaluation is based upon the

⁴ The record also contains a second Florida Identification Card, also issued on June 30, 1999, listing the petitioner's address as the [REDACTED] residence.

petitioner's testimony to her, the evidentiary weight of her evaluation is similarly undermined. The AAO does not discount or diminish the qualifications of [REDACTED] to opine on the petitioner's mental state; rather, it is the testimony of the petitioner to [REDACTED] that is questionable.

Having discounted the value of the petitioner's statement and [REDACTED]'s evaluation, the AAO turns to the only remaining evidence in the record discussing the petitioner's purported battery and/or extreme cruelty: the March 28, 2007 affidavits of [REDACTED] and [REDACTED], whose contents were set forth previously. However, these affidavits are flawed as well: the AAO notes that the most of the language of these two affidavits, and all of the language pertaining to the alleged abuse, is identical (including the same typographical error regarding the alleged joint residence), which raises the question of who actually wrote them. While the AAO does not question the authenticity of the signatures, it does not appear that the expressions in the letters are actually those of the authors. Accordingly, the evidentiary weight of these two affidavits is diminished.

In a case such as this, where there is little or no physical evidence of battery and/or extreme cruelty, the petitioner's affidavits are crucial. However, as noted previously, the petitioner in this particular case has introduced inconsistencies and discrepancies into the record, and has failed to resolve them. However, even if the AAO were to accept the petitioner's statements at face value, the AAO would still find that he has failed to establish that he was the victim of battery and/or extreme cruelty at the hands of R-G-. His claims of physical abuse are generalized, and lack details such as dates. He states that she abused him at their place of employment and socially isolated him, but there are no affidavits or statements from co-workers verifying such abuse. He states that he became depressed and had to seek help from a counselor, but the record contains no evidence of any such meetings beyond one interview with [REDACTED]. Although he states that R-G- took money for gambling, he provides no details, such as how much she spent, or even an estimate of how much she spent. He states that she destroyed property, but provides no examples of the types of property that she destroyed. He states that she beat him, but provides no specific information, such as where she hit him. The record, therefore, is insufficient to establish the petitioner's claims of abuse.

The AAO finds that the petitioner has failed to demonstrate that he suffered battery and/or extreme cruelty. Further, the record contains significant and unresolved inconsistencies and discrepancies. Accordingly, the weight of the evidence does not satisfy the petitioner's burden of proof. The AAO, therefore, concurs with the director's finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by R-G- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

The director also found that the petitioner had failed to establish that entered into marriage with R-G- in good faith. In his December 5, 2006 NOIR, the director noted that the Orlando District Office had raised questions regarding the nature of the petitioner's marriage to R-G-. In its notice of intent to deny the petitioner's Form I-130, the Orlando District Office had stated the following:

On June 28, 2001, [R-G-] and the [petitioner] appeared before an officer of the Service for an interview in connection with the visa petition. [R-G-] and the [petitioner] were placed under oath by the examining officer and questioned separately about their domestic life and shared experiences. The questioning covered the entire duration of the relationship, from inception until the day of the interview. During this questioning it was observed by another officer that the [petitioner] and the interpreter had not left the main interviewing room and could thereby hear all of the questions being asked and the responses. The interview session was compromised. . . .

On June 28, 2001, the examining officer, based upon the situation that occurred during the interview, requested that [the petitioner] provide proof he was living at the same address with [R-G-]. . . .

On September 12, 2001 your attorney . . . [sent] **a copy of the petitioner's Florida identification card with the home address issued on June 30, 1999 even though during the interview [the petitioner] claimed that they had only known each other a year prior to getting married on February 16, 2001, and [R-G-] claimed they knew each other since April 2000** [emphasis in original]. . . .

On January 29, 2002, another request for evidence was sent to [R-G-], [the petitioner], and their attorney . . . requesting that evidence of a bona fide relationship be submitted from the time the relationship began to the present date. . . .

No evidence was submitted to cover the time period from the time that [the petitioner] and [R-G-] claim to have met in February 2000/April 2000 to the date of the interview on June 28, 2001 [emphasis in original]. . . .

The record contains no information regarding the circumstances surrounding the petitioner and his wife's first meeting; their first impressions of each other; their courtship; their decision to marry; their wedding ceremony; or their early life together. As noted previously, the record contains significant, and unresolved, inconsistencies and discrepancies pertaining to when the couple began dating and when they began living together. The record contains only intermittent documentation that the petitioner and R-G- resided together at the same residence, and nearly all of it is dated after the petitioner's permanent residency interview on June 28, 2001. Nor has the petitioner explained why, if he and the petitioner were living together in a good faith marriage, many of his financial documents were delivered to a post office box. While this not in and of itself problematic, the petitioner's failure to offer an explanation, after being specifically requested for one by the director's NOIR, is further evidence of a lack of good faith in entering the marriage.

The petitioner is not required to submit preferred primary or secondary evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the petitioner has made assertions contradicting his earlier assertions regarding when he and his wife began dating and

when they began living together. He has also failed to offer evidence overcoming the concerns delineated by the director in his NOIR. Moreover, the lack of probative detail and substantive information in the petitioner's testimony regarding how he met his wife, their courtship, decision to marry, wedding, and shared residences and experiences, significantly detracts from the credibility of his claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with R-G- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Accordingly, the petitioner has failed to overcome the grounds of the director's revocation: (1) he has failed to demonstrate that his wife subjected him to battery or extreme cruelty; and (2) he has failed to demonstrate that he entered into marriage with R-G- in good faith. Nor does the AAO agree with counsel's suggestion that the petitioner has been the victim of gender discrimination. Counsel offers no explanation of, or any evidence to back, her suggestion of gender discrimination. The AAO has reviewed the entire record of proceeding, and finds no evidence of a propensity on the part of the director to deny the petition on the basis of the petitioner's gender. Counsel's suggestion is without merit. For all of these reasons, the AAO agrees with the director's decision to revoke approval of the immigrant petition.

Beyond the decision of the director, the AAO finds that approval of the immigration petition should be revoked on two additional grounds: (1) that the petitioner has failed to demonstrate that he and his wife reside together; and (2) that the record does not establish that the petitioner has a qualifying relationship with a United States citizen.

Joint Residence

The AAO incorporates here its previous discussion regarding the petitioner's contradictory statements and evidence regarding the date he began living with R-G-, as well as the Orlando District Director's comments with regard to the petitioner's documentation of his joint residence with R-G-, which was quoted at length above. Again, the record contains only intermittent documentation that the petitioner and R-G- resided together at the same residence, and nearly all of it is dated after the petitioner's permanent residency interview on June 28, 2001. Nor has the petitioner addressed the director's specific questions regarding his usage of a post office box to receive mail. For all of these reasons, the petitioner has not established by a preponderance of the evidence that he resided with R-G-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Qualifying Relationship and Eligibility for Classification as an Immediate Relative

In their March 28, 2007 affidavits, [REDACTED] and [REDACTED] state that they have personal knowledge that the petitioner and R-G- divorced in September 2002. Although there is no divorce decree in the record of proceeding the AAO notes that, if [REDACTED] and [REDACTED] are correct, the petitioner is ineligible to file the instant Form I-360, as he did not have a qualifying relationship with a citizen of the United States.

The instant petition was filed on November 18, 2002, two months after the marriage ended in September 2002. Section 204(a)(1)(A)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a citizen of the United States is eligible to self-petition under these provisions if he or she is an alien:

- (CC) who was a bona fide spouse of a United States citizen within the past 2 years and –
 - (aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence
 - (bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or
 - (ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. . . .

As set forth previously, the petitioner has failed to demonstrate that he suffered battery and/or extreme cruelty by R-G-. Therefore, he has also failed to demonstrate a connection between the termination of the marriage and any battery or extreme cruelty he was subjected to by R-G-. If the petitioner was divorced from R-G- at the time the petition was filed, the record then fails to establish that he had a qualifying relationship with a United States citizen on the date the petition was filed, as it fails to demonstrate a connection between the termination of the marriage and any battery or extreme cruelty he was subjected to by R-G-. The petitioner has failed to establish a qualifying relationship, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. He is, therefore, ineligible for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act. For this additional reason, the petition may not be approved.

Conclusion

The AAO concurs with the director's determination that the petitioner has failed to demonstrate that his wife subjected him to battery or extreme cruelty; and that he has failed to demonstrate that he entered into marriage with R-G- in good faith. Beyond the decision of the director, the AAO finds that the petitioner has failed to demonstrate that he and his wife shared a joint residence, and that he had a qualifying relationship with a United States citizen. Accordingly, based on the present record, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and the AAO agrees with the director's decision to revoke approval of the petition. For all of these reasons, the AAO will not disturb the director's revocation of the petition's approval.

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).

Approval of the petition will be revoked and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

ORDER: The appeal is dismissed.