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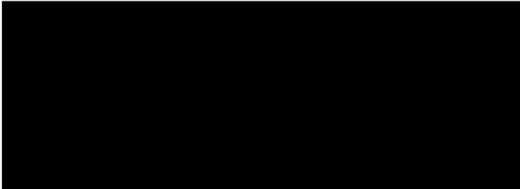
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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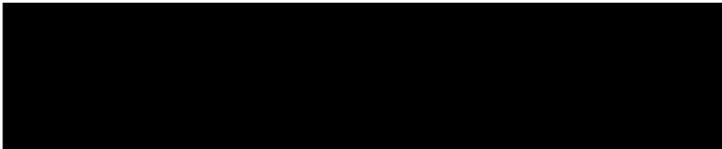
IN RE:

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
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 classification pursuant to 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 his United States citizen spouse.

The director denied the petition because the petitioner did not establish that he resided with his wife and that he married her in good faith.

On appeal, counsel submits a brief and copies of documents previously submitted.

The AAO concurs with the director's determination that the petitioner has not established the requisite joint residency and good-faith entry into the marriage. Beyond the director's decision, the AAO finds an additional ground for denial of the petition based on the present record: section 204(c) of the Act mandates the denial of this petition because the record contains a sworn admission by the petitioner that he committed marriage fraud in an attempt to gain an immigration benefit through his wife.

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 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.

(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 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.

* * *

(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 Nigeria who was admitted to the United States on December 20, 2005, as a B-2 nonimmigrant visitor. On May 3, 2006, the petitioner married L-B-¹, a U.S. citizen, in Oakland, California. L-B- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 14, 2007, the director terminated the I-130 petition based on the withdrawal by L-B-, and also denied the petitioner's corresponding Form I-485 pursuant to section 204(c) of the Act because the record established that their marriage was entered into solely for the purpose of obtaining lawful permanent residency status for the petitioner. On March 14, 2007, the petitioner was served with a Notice to Appear for removal proceedings charging him under section 237(a)(1)(B) of the

¹ Name withheld to protect individual's identity.

Act as an alien who remained in the United States for a time longer than permitted and section 237(a)(1)(G)(ii) of the Act as an alien who failed or refused to fulfill his marital agreement, which was made for the purpose of procuring his admission as an immigrant, and thus he is considered to have procured his visa or other documentation by fraud. The petitioner remains in proceedings before the San Francisco Immigration Court.

The petitioner filed the instant Form I-360 on November 19, 2007. On December 6, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good moral character. The petitioner, through counsel, timely responded to the RFE with additional evidence. On May 19, 2009, the director issued a second RFE of, *inter alia*, the requisite joint residency and good-faith entry into the marriage. The petitioner, through counsel, responded to the RFE with additional evidence. On October 1, 2009, the director denied the petition on the grounds that the petitioner did not establish that he resided with his wife and that he married her in good faith. Counsel timely appealed.

On appeal, counsel states that the director ignored the evidence. Counsel states that “for all practical purposes, [the petitioner and L-B-] functionally resided together. Counsel also states that the petitioner provided proof, such as a life insurance policy, joint automobile policy, and an income tax return, showing that he entered into the marriage in good faith.

As discussed above, the AAO finds an additional ground for denial of the petition based on the present record: section 204(c) of the Act bars approval of this petition. Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws[.]

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien’s file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). U.S. Citizenship and Immigration Services (USCIS) may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975).

AAO's independent review of the record in this case indicates that the petitioner's marriage to L-B- was entered into for the purpose of evading the immigration laws and section 204(c) of the Act consequently mandates the denial of the petition. The record contains a Form I-215W, Record of Sworn Statement in Affidavit Form, signed by the petitioner under oath on March 14, 2007 at the interview for his Form I-485 application, which states:

I met [L-B-] last year February and she agreed to help me and we got married. I met her through her sister [REDACTED]. She agreed to marry me for money, that is if I paid her. We agreed on \$7,000. She has collected up to \$6,000. For her missing work I gave her \$100. We have not had sex.

We acknowledge the relevant evidence submitted by the petitioner, which is discussed herein. These documents, however, do not outweigh the petitioner's sworn, willful and voluntary admission that his marriage to L-B- was fraudulent and that he married her to gain an immigration benefit. Although the petitioner claims in his October 5, 2007 statement that he had no choice but to agree to whatever L-B- said, he signed the statement which reads, in part: "[The Immigration Officer] has told me that my statement must be made freely and voluntarily. I am willing to make such a statement. . . ." The petitioner's documented admission of marriage fraud is substantial and probative evidence of his attempt to be accorded immediate relative status through a marriage that was entered into for the purpose of evading the immigration laws. Section 204(c) of the Act consequently bars approval of the instant petition.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that he resided with his wife:

- The petitioner's statement dated October 5, 2007, and his notarized statement dated August 12, 2009, submitted in response to the director's May 19, 2009 RFE;
- The petitioner's Form G-325A, Biographic Information signed by him on May 10, 2006, on

which he stated that he resided at [REDACTED] in San Ramon, California from May of 2006 to the present;

- A notarized letter from the petitioner's older sister, [REDACTED] dated August 4, 2009;
- Copies of the petitioner's 2006 W-2 forms listing the [REDACTED] address;
- A copy of a credit union statement, dated August 31, 2006, addressed to the petitioner and L-B- at the [REDACTED] reflecting \$25 in savings;
- A copy of a credit union statement, dated January 31, 2007, addressed to the petitioner and L-B- at the [REDACTED] address, reflecting that both the checking and savings accounts were closed on January 26, 2007;
- A copy of a bank statement from Bank of America (BOA), dated February 5 through February 6, 2007, addressed to the petitioner and L-B- at [REDACTED] address, reflecting a beginning balance of zero and an ending balance of \$100, and a July 11, 2009 letter from BOA stating that the account was closed on April 1, 2008;
- A copy of a "past due notice" from Comcast, dated August 26, 2006, addressed to L-B- at the [REDACTED] address;
- A copy of a newspaper subscription welcome letter, dated February 7, 2007, addressed to L-B- at [REDACTED] address;
- An undated letter of introduction from Allstate Insurance Company addressed to the petitioner and L-B- at [REDACTED] address;
- An undated letter of advertisement from GMAC Insurance addressed to L-B- at [REDACTED] address;
- An undated letter from Capital One addressed to the petitioner at the [REDACTED] address;
- A letter from American Express, dated September 2, 2006, addressed to the petitioner at [REDACTED] address;
- An undated letter from the California DMV addressed to the petitioner at [REDACTED] address;
- A promotion from dishNetwork, with a "respond by" date of February 25, 2007, addressed to L-B- at [REDACTED] address;
- Direct deposit statements for February of 2007, addressed to the petitioner at [REDACTED] address; and
- Account statements for November and December of 2006, addressed to the petitioner at [REDACTED] address.

In his October 5, 2007 statement, the petitioner states that after his marriage to L-B- on May 3, 2006, L-B- told him that he could not move in with her because she did not want her daughter to find out about their marriage yet. The petitioner also states that the L-B- made him promise not to tell her daughter that they were married because L-B- wanted him to win her daughter's friendship first. The petitioner states that he and L-B- consummated their marriage one week after their wedding because he and his friend [REDACTED] went to [REDACTED] for a few days after the wedding, and because it was not convenient for him and L-B- to meet anywhere before then. The petitioner states that after one month of marriage, he insisted on living together with L-B-, whereupon L-B- told him that she was receiving government benefits and would lose those benefits if the government found out that she was married. The petitioner reports that he visited L-B- "from time to time" and he sometimes would go to her house after her

daughter went to bed, and other times they saw either other during the day after L-B-'s daughter had left for school. The petitioner states that L-B- also went to see him at his sister's house in Livermore. The petitioner states that when his sister and her husband moved to San Ramon in September, they gave him "a room at the guest chalet outside" and L-B- visited him there because it was more private than her house.

In his August 12, 2009 statement, the petitioner states that his sister allowed him to stay in their guest house so that he could save money and move in with L-B-. The petitioner also states that this living situation "made it very easy and convenient for us to see each other every day and every time." The petitioner states that he had a suitcase of personal belongings at L-B-'s house and that sometimes he slept there and other times L-B- stayed with him. The petitioner states that although they did not live together in the same house, it did not stop them "from living together as husband and wife." The petitioner states that even though he did not live with L-B-, he considered himself to reside there because he had his clothes and personal belongings there and helped L-B- around the house.

The record contains numerous inconsistencies and deficiencies regarding the petitioner and L-B-'s claimed joint residence. On the Form I-360, the petitioner stated that he resided with his wife from the month of their marriage in May of 2006 until March of 2007, and listed the last address at which they resided together as: [REDACTED]. The record, however, contains insufficient evidence that the petitioner and L-B- ever resided together at either [REDACTED] address or [REDACTED] address in San Ramon, California. For example, on the Form G-325A, Biographic Information, which the petitioner signed on May 10, 2006, the petitioner listed [REDACTED] address as his address from May of 2006. This information conflicts with his own October 5, 2007 affidavit, in which he states that, after their marriage on May 3, 2006, L-B- told him that he could not move in with her because she did not want her daughter to find out about their marriage yet, that they consummated their marriage one week after the wedding because they had no place to meet before then, and that he had gone to Reno right after the wedding with his friend [REDACTED]. The petitioner went on to state in his October 5, 2007 affidavit that, after his marriage to L-B-, he visited her "from time to time," and that she visited him at his sister's house [REDACTED]. The AAO acknowledges counsel's statement on appeal that "for all practical purposes, [the petitioner and L-B-] functionally resided together" and that the director ignored the evidence, including the joint bank statements and other correspondence addressed to the petitioner and L-B- at [REDACTED] address. However, as discussed above, the record contains numerous unexplained inconsistencies and deficiencies regarding the claimed joint residence. For example, although the petitioner claims in his August 12, 2009 affidavit that he kept his clothes and personal belongings at L-B-'s house even though he "didn't live there," and that they "were together almost every time," the petitioner does not make this same claim in his October 5, 2007 affidavit, in which he describes himself as visiting only "from time to time," and only after L-B-'s daughter had gone to bed or left for school. In addition, in her August 4, 2009 letter, the petitioner's sister, [REDACTED], who resides at [REDACTED] address, states that the petitioner spent occasional nights with L-B- "as long as the daughter does not know" and that "[L-B-] would come and spend the nights at my guest house." Again, [REDACTED] testimony does not indicate that the petitioner and L-B- resided together. In addition, none of the other letters submitted on the petitioner's behalf, listed herein, contains any details of the petitioner

and L-B- residing together. While counsel asserts on appeal that the director ignored the evidence, the inconsistencies and deficiencies discussed above, along with the petitioner's own sworn testimony that his marriage was arranged solely to gain an immigrant visa, detracts from the credibility of the documentation listed above. A review of the record in its entirety indicates that, while the petitioner had the documentation listed above mailed to L-B-'s [REDACTED] address, he did not reside with L-B- at either [REDACTED] address or [REDACTED] address in San Ramon, California.

In sum, the relevant evidence contains unresolved inconsistencies regarding the petitioner's alleged residence with his wife. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

In addition to the documentation listed above, the record contains the following evidence relevant to the petitioner's claim that he married L-B- in good faith:

- A copy of the "Evidence of Liability Insurance" and a "Declarations and Warranties" document from AAA, addressed to the petitioner and L-B- at [REDACTED] address, naming them as the insured, and reflecting an effective date of September 12, 2006 and an expiration date of September 12, 2007;
- A letter dated June 15, 2009, from [REDACTED] reflecting that from January 22, 2007 through June 15, 2008, L-B- was the primary beneficiary of the petitioner's life insurance policy;
- Copies of the 2006 "married filing separately" income tax return for the petitioner, listing the [REDACTED] address;
- A letter from [REDACTED] dated May 13, 2007, stating that he met the petitioner at church, and that he was later introduced to the petitioner and his wife through a mutual acquaintance;
- A letter from [REDACTED] dated October 2, 2007, stating that he introduced the petitioner to L-B- at his house, and that the petitioner entered into the marriage in good faith;
- Two letters (the latter notarized) from the petitioner's brother, [REDACTED] dated October 27, 2007 and November 6, 2009, respectively, stating that the petitioner told him that he married L-B- at a friend's house, and that the petitioner entered into the marriage in good faith and with a clean mind;
- A letter from the petitioner's stepmother, [REDACTED], dated October 26, 2007, stating that she and all of the petitioner's "family back in Nigeria were all involved in the marriage even though we could not make it to the marriage";
- A notarized letter from the petitioner's friend, [REDACTED], dated November 2, 2007, stating, in part, that he was unable to attend the petitioner's wedding because it was a work day, and that the petitioner entered into his marriage in good faith;
- An second letter, undated, from the petitioner's friend, [REDACTED], stating, in part, that due to his medical condition, he was unable to travel to the petitioner's wedding, which was heartbreaking to him, and that the petitioner entered into his marriage with a clean heart and in good faith;

- Notarized letters from the petitioner's cousin, [REDACTED] dated October 15, 2007 and July 3, 2009, respectively, stating that the petitioner married L-B- in good faith and for love;
- A notarized statement from the sister of L-B-, [REDACTED] dated March 9, 2007, stating that she was present at the marriage of the petitioner and L-B-;
- A notarized letter from the petitioner's cousin, [REDACTED] dated July 26, 2009, stating that he learned of the petitioner's marriage to L-B- several years ago, but never had the opportunity to meet them together;
- A notarized letter from the petitioner's acquaintance, [REDACTED] dated August 6, 2009, stating that she was aware of the petitioner's marriage and that he entered into the marriage "with a clean heart and in good faith";
- A notarized letter from [REDACTED] dated July 13, 2009, stating that the petitioner and L-B- attended a party at their home, and that, to the best of her knowledge, the petitioner married L-B- in good faith;
- A notarized letter from the petitioner's acquaintance, [REDACTED] dated July 11, 2009, stating, in part, that the petitioner and L-B- attended parties at his house;
- A notarized letter from the petitioner's acquaintance, [REDACTED], dated June 16, 2009, stating, in part, that the petitioner entered into the marriage in good faith and with a clean heart;
- A notarized letter from the petitioner's brother, [REDACTED] dated July 14, 2009, stating, in part, that, due to an important national assignment, he was unable to attend the petitioner's wedding, and that each time he spoke to the petitioner on the phone, the petitioner let him know how happy he was as a married man; and
- Photocopies of wedding cards and photographs.

In his October 5, 2007 statement, the petitioner states that he met L-B- on February 14, 2006 at the house of his friend [REDACTED]. The petitioner states that he and L-B- always met there because [REDACTED] who lived with L-B-'s sister [REDACTED] always held small gatherings. The petitioner states that L-B- also invited him to her house and cooked for him, he helped her around the house, and they went out to lunch together. The petitioner also stated that L-B- told him that because he was a lawyer, he would "make so much money." The petitioner explains that by that time he had developed interest in her because she was very nice and caring. The petitioner states that she and L-B- continued to see each other and that she went to his sister's house in Livermore and met his family, and that she introduced her family to him. The petitioner states that L-B- proposed to him on Easter Sunday and that he accepted because he loved her in his own way. The petitioner states: "She told me that I could not move in immediately after the marriage, that she had to rearrange some things in her house, that it would take a few weeks. She did not give me any details." The petitioner states that he and L-B- got married on May 3, 2006, and that two of L-B-'s sisters attended the wedding, along with his sister and her husband. The petitioner explains that after the wedding, L-B- told him that she did not want her daughter to know about their marriage until he won her friendship, and that he and L-B- consummated their marriage one week after the wedding because there was no place for him and L-B- to meet until then, and because he went to Reno with his friend [REDACTED] right after the wedding.

The AAO acknowledges counsel's assertion on appeal that the director ignored the evidence, that the petitioner provided proof, such as a life insurance policy, joint automobile policy, and an income tax

return, showing that he entered into the marriage in good faith. However, the evidence indicates that the auto insurance policy was taken out just prior to their first immigration interview, and the life insurance policy was taken out only a few weeks prior to their March 14, 2007 immigration interview. In addition, the numerous letters and statements from the petitioner's friends and relatives, listed above, attesting to the petitioner's good-faith entry into his marriage, are general and lack detail. The AAO acknowledges the petitioner's 2006 "married filing separately" income tax return listing [REDACTED] address, and the petitioner's assertion in his October 5, 2007 statement that L-B- "did not want to file as a married woman because it would affect the welfare she collects from the government." Given the numerous inconsistencies and deficiencies discussed above, however, the petitioner's 2006 income tax return is insufficient to establish that he married L-B- in good faith.

The AAO also acknowledges the petitioner's wedding cards and photographs. The photographs of the petitioner and L-B- confirm that they were married and pictured together. These documents alone, however, are insufficient to establish that the petitioner married L-B- in good faith, given the inconsistencies and deficiencies discussed above. Moreover, the lack of probative detail and substantive information in the petitioner's testimony regarding his courtship, decision to marry, and shared experiences, significantly detracts from the credibility of his claim. In addition, the petitioner's own sworn testimony that his marriage was arranged solely to gain an immigrant visa detracts from the credibility of all the documentation listed above. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner has not demonstrated that he resided with his wife and that he entered into their marriage in good faith. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

We concur with the director's determination that the petitioner has not demonstrated the requisite joint residence and good-faith marriage. Counsel's claims on appeal do not overcome this ground for denial of the petition. Accordingly, based on the present record, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Beyond the director's decision, we also find that section 204(c) of the Act bars approval of this petition. In addition, we find that the petitioner has not demonstrated the requisite battery and extreme cruelty.

We note that 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 petition will be denied for the above stated reasons, 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.