

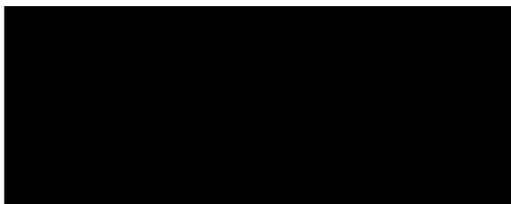
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Bq



FILE:



Office: VERMONT SERVICE CENTER

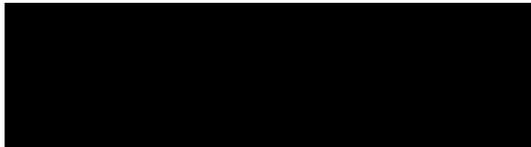
Date: **AUG 25 2010**

IN RE:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew,
Chief, Administrative Appeals Office

1. The first part of the document
is a list of the names of the
persons who were present at the
meeting.

2. The second part of the document
is a list of the names of the
persons who were present at the
meeting.

DISCUSSION: The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien child battered or subjected to extreme cruelty by her United States citizen stepparent.

The director denied the petition on the basis of his determination that because the petition was filed after the petitioner reached the age of 21, she had failed to establish the existence of a qualifying parent-child relationship with a United States citizen. The director also determined that the petitioner had not demonstrated that her stepparent had subjected her to battery or extreme cruelty; that she resided with her stepparent; and that she was a person of good moral character. On appeal, the petitioner submits a letter.

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), defines a child as, in pertinent part:

an unmarried person under 21 years of age who is . . . (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of 18 years at the time the marriage creating the status of stepchild occurred.

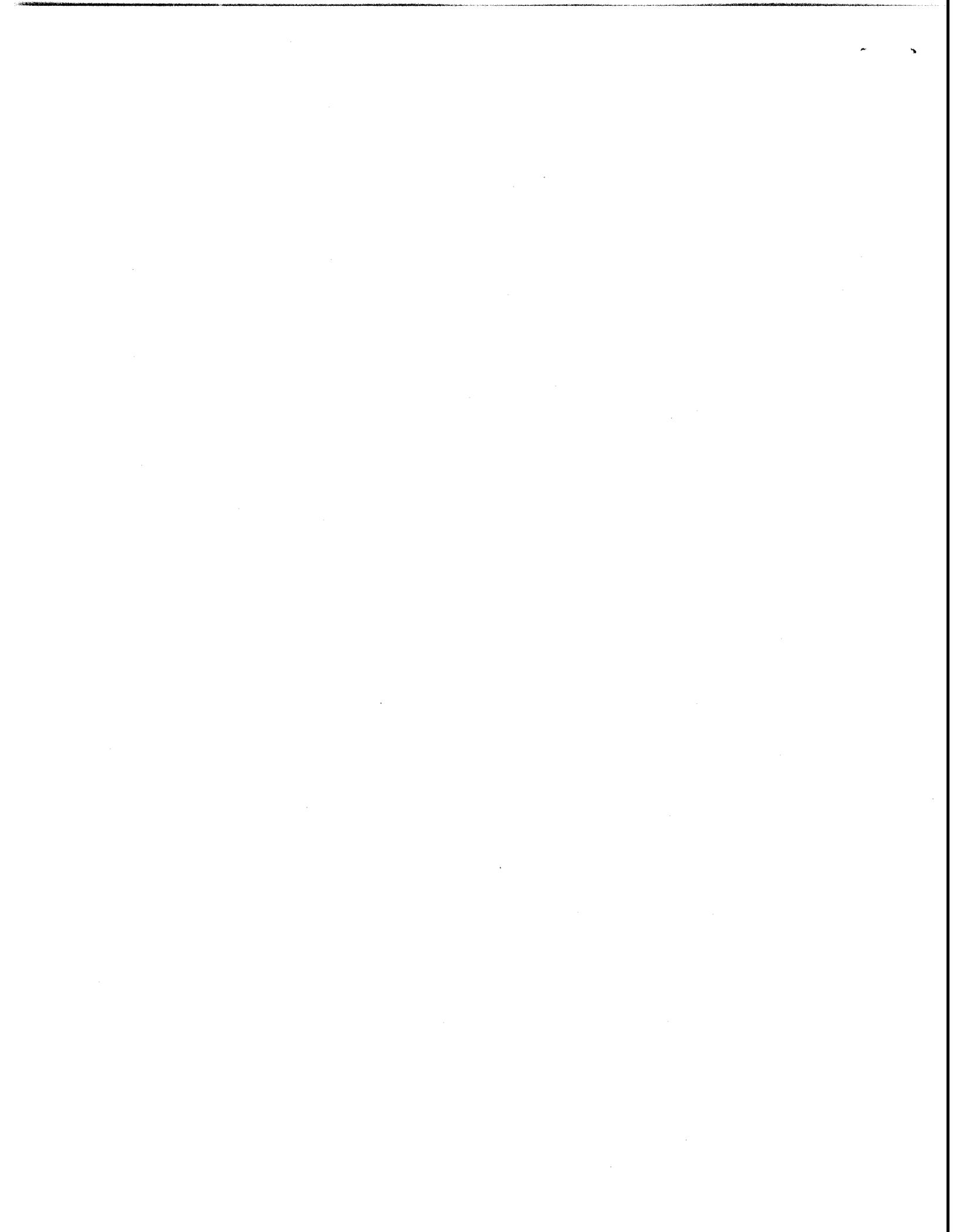
Section 204(a)(1)(A)(iv) of the Act provides, in pertinent part, that an alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced such status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General (now Secretary of Homeland Security) under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Secretary that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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 regulation at 8 C.F.R. § 204.2(e)(2)(i) further states:

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.

Self-petitions filed by children were affected by passage of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005)¹ and the Violence Against Women and Department of Justice Reauthorization Act of 2005 Technical Amendments (VAWA-DOJ 2005),² which amended section 204(a)(1)(D) of the Act by providing for continued eligibility for certain individuals to file a self-petition as a child after attaining age 21, but before attaining age 25, if the individual can demonstrate that the abuse was at least one central reason for the filing delay. As amended by these acts of Congress, section 204(a)(1)(D)(v) of the Act states the following:

For purposes of this paragraph, an individual who is not less than 21 years of age, who qualified to file a petition under subparagraph (A)(iv) or (B)(iii) as of the day before the date on which the individual attained 21 years of age, and who did not file such a petition before such day, shall be treated as having filed a petition under such subparagraph as of such day if a petition is filed for the status described in such subparagraph before the individual attains 25 years of age and the individual shows that the abuse was at least one central reason for the filing delay. . . .

The petitioner, a citizen of Jamaica, was born on November 21, 1982. Her father married I-K-³ a citizen of the United States, on September 28, 1996. The petitioner filed the instant Form I-360 on July 20, 2009, when she was 26 years of age. In his January 21, 2010 decision denying the petition, the director, citing to 8 C.F.R. § 204.2(e)(1)(ii), stated that because the petitioner was over the age of 21 at the time she filed the petition, it could not be approved.

On appeal, the petitioner notes section 204(a)(1)(D)(v) of the Act and its provision for the filing of a Form I-360 until the self-filer attains the age of 25 years, if the individual shows that the abuse was at least one central reason for the filing delay. The petitioner also invokes the Child Status Protection Act (CSPA) of 2002.⁴ According to the petitioner, these two provisions of law permit approval of the instant petition.

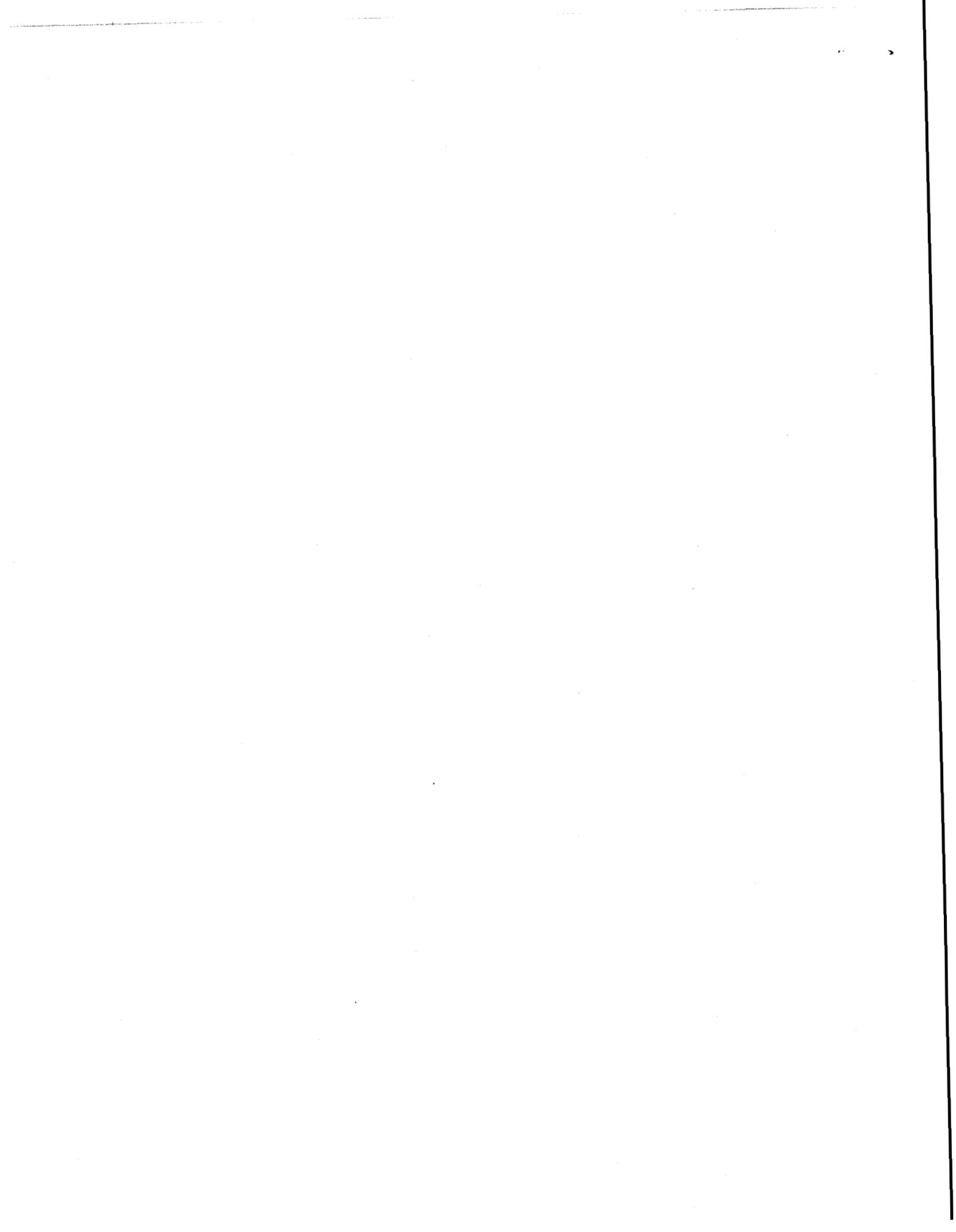
The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO withdraws the director's analysis, but not his final determination, regarding the petitioner's failure to establish her eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States.

¹ The Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162 (2006)

² Violence Against Women and Department of Justice Reauthorization Act of 2005 Technical Amendments, Pub. L. 109-271 (2006).

³ Name withheld to protect individual's identity.

⁴ Child Status Protection Act, P.L. 107-278, 116 Stat. 927 (2002).



As noted previously, the director cited 8 C.F.R. § 204.2(e)(1)(ii) in support of his decision to deny this petition. The AAO withdraws that analysis, as it was erroneous. As noted, the passage of VAWA 2005 and VAWA-DOJ 2005 allowed for continued eligibility for certain individuals to file a self-petition as a child after attaining age 21, but before attaining age 25, if the individual could demonstrate that the abuse was at least one central reason for the filing delay. However, these provisions of VAWA 2005 and VAWA-DOJ 2005, which are codified at section 204(a)(1)(D)(v) of the Act, provide no relief to the petitioner, as she was over the age of 25 at the time the petition was filed.

Nor does the petitioner's citation to the CSPA provide any basis upon which to approve the petition. The petitioner cites no specific provision of the CSPA to support her claim. While the CSPA provided "age-out" protection to child self-petitioners, none of its provisions mandate approval of this case. *See* sections 201(f)(4), 203(h)(4), 204(a)(1)(D) of the Act, 8 U.S.C. §§ 1151(f)(4), 1153(h)(4), 1154(a)(1)(D). Specifically, section 204(a)(1)(D)(i)(I) of the Act states:

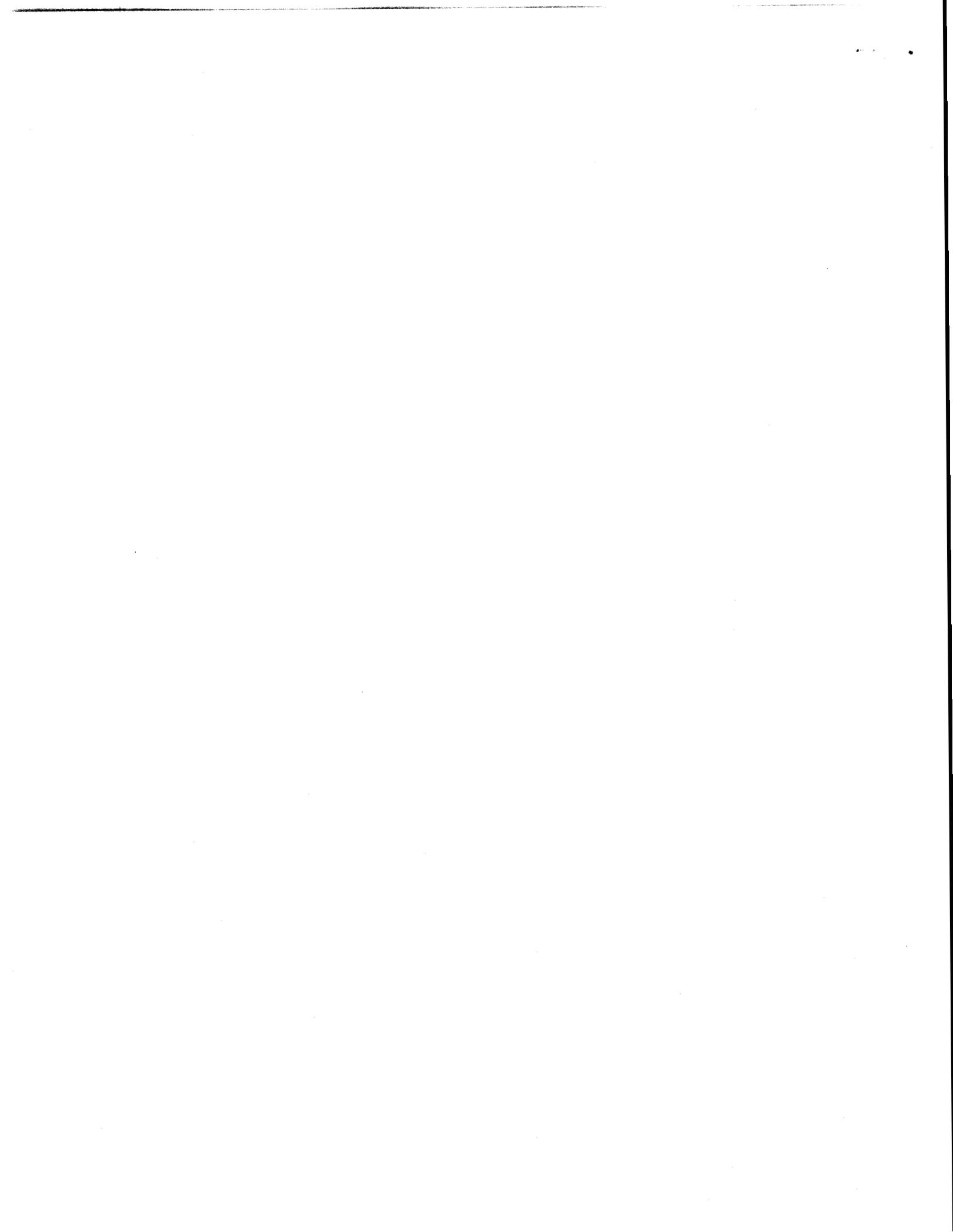
Any child who attains 21 years of age who has filed a petition under clause (iv) of section 204(a)(1)(A) or section 204(a)(1)(B)(iii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a petitioner for preference status under paragraph (1), (2), or (3) of section 203(a), whichever paragraph is applicable, with the same priority date assigned to the self-petition filed under clause (iv) of section 204(a)(1)(A) or section 204(a)(1)(B)(iii). No new petition shall be required to be filed

However, as the instant petition was not filed before the petitioner reached the age of 21, the CSPA amendment affords her no relief.

Although the director incorrectly relied on 8 C.F.R. § 204.2(e)(1)(ii), we affirm his ultimate determination that the petitioner has failed to establish the existence of a qualifying relationship with a United States citizen. Beyond the decision of the director, the petitioner also has not demonstrated that she was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iv) of the Act.

On appeal, the petitioner does not address the additional grounds for denial and we concur with the director's determination that she has failed to establish her stepmother's battery or extreme cruelty, residence with her stepmother, and her own good moral character, as required by section 204(a)(1)(A)(iv) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043



(E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied 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 and the appeal will be dismissed.

ORDER: The director's January 21, 2010 decision is withdrawn in part and affirmed in part. The appeal is dismissed. The petition remains denied.

