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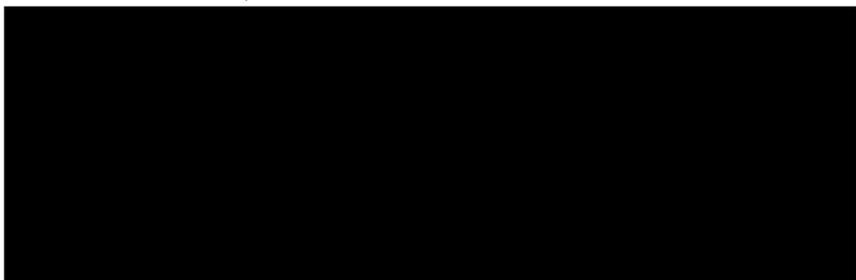
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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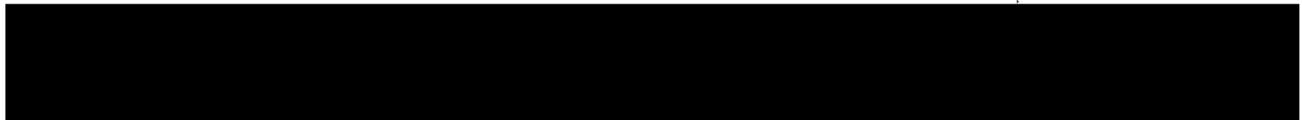


Office: VERMONT SERVICE CENTER

Date: OCT 05 2010

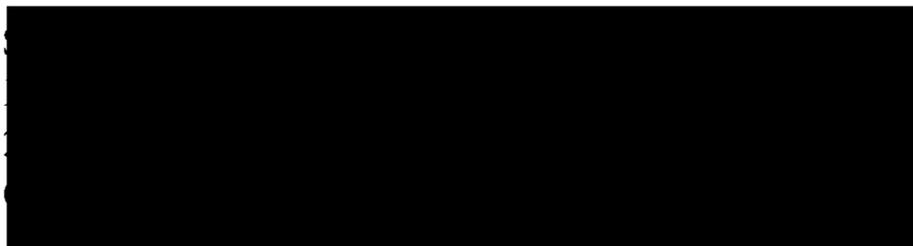
IN RE:

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:

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

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

The petitioner seeks immigrant classification 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 battered or subjected to extreme cruelty by a United States citizen.

On April 8, 2010, the director denied the petition, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse. The director noted but did not discuss the petitioner's failure to establish his intent to enter into the marriage in good faith by a preponderance of the evidence, as required by section 204(c) of the Act which is applicable in this matter.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(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.

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

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

* * *

(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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Egypt. He entered the United States on February 23, 2000 as a nonimmigrant visitor with authorization to remain in the United States until August 22, 2000. On December 26, 2000, the petitioner married C-J-¹, his first wife. On February 15, 2001, C-J- 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 Resident or Adjust Status. On August 11, 2003, United States Citizenship and Immigration Services (USCIS) issued a Notice of Intent to Deny (NOID) the I-130 petition and ultimately denied the petition on May 17, 2004, finding that the marriage had been entered into for the sole purpose of evading immigration law. C-J- appealed the denial of the decision and the Board of Immigration dismissed the appeal on October 10, 2006. On May 16, 2006, the Circuit Court of Cook County, Illinois entered a Judgment for Dissolution of Marriage terminating the marriage between the petitioner and C-J-.

The record includes the petitioner's marriage certificate showing that the petitioner married S-M- on July 19, 2006. S-M- filed a Form I-130 on the petitioner's behalf on July 10, 2008 and the I-130 petition was approved on August 26, 2008. The record does not include a second filed Form I-485 and the petitioner's initial Form I-485 filed February 15, 2001 appears to still be pending. On June 15, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On the Form I-360, the petitioner indicated that he had resided with S-M- from August 2006 to February 2009.

Abuse

In support of the petition, the petitioner submitted a personal statement dated May 11, 2009. The petitioner stated that he met S-M- in the spring of 2005; that the couple had an engagement party on June 12, 2005 and almost 170 people attended; the couple were engaged for nine months; and married on August 27, 2006.² The petitioner indicated that the marriage was not consummated because it seemed that S-M- was too scared; that he asked her to go to the doctor but she refused; that she called him dirty; finally she asked him to do some weird sex that he was not comfortable with; and that he went to see a urologist because he was suffering from erectile dysfunction and was prescribed medication. The petitioner noted: that S-M- had panic attacks and was prescribed Xanax; she said mean things to him but he thought it might be the medication; that she had a history of

¹ Name withheld to protect the individual's identity.

² The petitioner does not explain why the marriage certificate submitted shows that the couple married on July 19, 2006.

rheumatic fever that he was unaware of prior to the marriage; and that every time he talked about sex or kids S-M- would start screaming mean things at him. The petitioner indicated that he opened a hair salon for S-M-'s dad, so S-M- could work but when she started making her own money she started giving him more of a hard time. The petitioner stated that his life was like this for two whole years with S-M- making him feel inadequate, not a good enough husband, not good in bed, not good with money, and just a bad person.

The petitioner noted: that he had a pending case with immigration prior to his marriage and that the case was finally denied a year and six months "from his marriage;" that his attorney talked to him and S-M-; that S-M- volunteered to file a petition on his behalf; and that since she filed for him, she started to treat him worse and control him and told him that she did not want kids with him because he would be deported. The petitioner recalled that after a big argument, S-M- told him that she was doing his papers and not to ask her about kids or anything else. The petitioner stated that on November 3, 2008, she agreed to go to a doctor and when she returned she told him that he wanted a wife and kids and she was not willing to give that to him and she left him the next day. The petitioner indicated that on January 2, 2009 he convinced her to come back and she stayed for three weeks but during those three weeks S-M- argued with him, threatened him, called him a liar, told him he would be deported, and called him derogatory names. The petitioner noted that on February 10, 2009 when he returned home he found that she had packed her things and left.

The record also included an April 10, 2009 letter from [REDACTED] the petitioner's close friend, who did not provide any information regarding battery or extreme cruelty perpetrated by S-M- against the petitioner. [REDACTED] noted that the petitioner was hurt when the couple separated.

In response to the director's request for further evidence (RFE) on this issue, counsel submitted a March 11, 2010 psychosocial assessment prepared by [REDACTED] licensed clinical social worker. [REDACTED] noted that she interviewed the petitioner on three occasions, January 26, 2010, January 27, 2010, and on February 8, 2010, for a total of ten hours. [REDACTED] noted that the petitioner was divorced from S-M- sometime in 2009.³ [REDACTED] noted that the petitioner reported he had trouble concentrating, cried a lot, lost weight, had nightmares, had trouble sleeping, did not feel like talking to anyone or going out, that he got nervous and talked to himself, and that he got dizzy while at work since S-M- left him. The petitioner reported to [REDACTED] that in March of 2009 he thought about killing himself but did not because of his religion. [REDACTED] indicated that the petitioner reported: that S-M-'s behavior changed after they married; that she would get mad over simple things and throw and break things; that she flew into a rage and broke a vase and his digital camera on one occasion; that she tried to provoke him to hit her; that she involved her father in their arguments and once her father pushed him; that she called him derogatory names and made fun of his appearance;

³ The record does not include a copy of the divorce judgment and neither the petitioner nor counsel provides the date of the divorce. The AAO observes that the Form I-360 petition was filed on June 15, 2009 and that without a copy of the recorded divorce judgment terminating the petitioner's marriage to S-M-, it is not possible to determine whether the couple continued to have a qualifying relationship when the petition was filed.

that she made fun of his family and disrespected his father; that once she started working she would not let him pay for anything; and that she spent between ten and fifty dollars a week on lottery tickets and demanded that he go out and get them. [REDACTED] also noted the petitioner's report of the couple's sexual problems and that S-M- did not want sexual intercourse but wanted anal sex which the petitioner found distasteful. [REDACTED] further noted that the petitioner reported: that S-M- and her father made threats to have him deported during the process of the divorce; that before the divorce was finalized, S-M- told him she would not finish his immigration papers if he did not agree to transfer her father's hair salon to her father. [REDACTED] offered her diagnostic impression and conclusions of the petitioner indicating that he exhibited symptoms of depression and anxiety, that he expressed guilt feelings about being divorced twice, and shame that he could not function sexually with his second wife. [REDACTED] opined that S-M- fit the profile of an abuser because she threw and broke things during arguments, tried to provoke the petitioner to hit her, refused to have sexual intercourse with him, made threats about not filing his papers or having him deported if he did not sign over the salon he helped his father-in-law buy, called him bad names and criticized his appearance, abandoned him, invaded his privacy, and insulted his family. [REDACTED] assigned dysthymia (a degree of depression) and post traumatic stress disorder to the petitioner's diagnosis. [REDACTED] listed the petitioner's stressors as divorced twice, immigration problems, abuse by second wife, conflict with this second wife's family over a business, and financial stress. [REDACTED] recommended that the petitioner would benefit from attending a support group.

Counsel also included a February 9, 2010 statement prepared by [REDACTED] the petitioner's friend and employer [REDACTED] declared that the petitioner's demeanor changed after his marriage to S-M- and that when the petitioner opened up to him, the petitioner indicated that he wanted children, a family, and a happy relationship with his wife, and from what the affiant could tell, S-M- was not making it easy. Counsel further included a February 19, 2010 letter signed by [REDACTED] who expressed his dislike for S-M- and his surprise that the petitioner became an introvert. [REDACTED] also noted that the petitioner wanted children and that he believed that the petitioner felt betrayed when S-M- indicated that she did not want children.

The petitioner further provided evidence that he had seen a medical doctor and had been prescribed a medication for erectile dysfunction. The petitioner also provided his former spouse's medical records that showed she had been prescribed Xanax and had been seen in the emergency room.

On April 8, 2010, the director denied the petition. Upon review of the evidence submitted, the director determined that the petitioner had submitted evidence of marital tensions between the petitioner and S-M- but had not submitted evidence that he had been subjected to battery or extreme cruelty. The director noted that the individuals who had submitted affidavits on the petitioner's behalf had not witnessed specific acts of abuse committed by the petitioner's former spouse.

On appeal, counsel for the petitioner asserts that although the director acknowledged his review of the documentary evidence submitted, the director did not specifically discuss the deficiencies of the documentary evidence submitted. Counsel further asserts that the director improperly required that the petitioner provide witnesses of the abuse perpetrated, to independently corroborate the

petitioner's statement. Counsel does not submit further evidence on appeal.

Upon review of the record, the AAO concurs with the director's determination on this issue. The petitioner has not provided any probative evidence that he was subjected to battery perpetrated by his former spouse. The AAO has reviewed the petitioner's statement, the affidavits submitted on his behalf, and the psychosocial evaluation prepared by [REDACTED]. Although [REDACTED] indicates that the petitioner reported to her that his former spouse would throw things and that on one occasion the petitioner's father-in-law pushed him, the petitioner does not provide an account of these incidents in his personal statement. The AAO finds that the probative value of the statements the petitioner made to [REDACTED] regarding these incidents are lessened as the petitioner did not find them significant enough to include in his personal statement. Moreover, the general description provided by Ms. [REDACTED] in her evaluation of these incidents is insufficient to require a conclusion that the petitioner was subjected to battery.

The AAO also finds that the petitioner has not submitted probative evidence demonstrating that he was subjected to extreme cruelty by his former spouse as extreme cruelty is defined in the statute and regulation. The AAO has reviewed the petitioner's personal statement and finds that the petitioner and his former spouse's incompatibility appears to have arose primarily from the petitioner's desire to have children and his former spouse's disinterest in having children. In addition, the AAO acknowledges the couple had different views on sexual relations. The petitioner has indicated that these differences led to arguments and his former spouse's screaming and name calling.

The petitioner further indicated that since his former spouse filed immigration papers for him she started to treat him worse and control him, threatened him, called him a liar, told him he would be deported, and called him derogatory names. The petitioner's allegations are not detailed and do not relate specific incidents of abuse. For example, the petitioner does not provide probative detail regarding his former spouse's threats regarding his immigration status. The petitioner's initial statement indicated that his wife did not want to have children because she feared he would be deported, not that she was threatening to have him deported. The petitioner's statements regarding this issue are general and do not provide a complete understanding of the circumstances of the marital relationship. The AAO acknowledges that the petitioner felt sexually inadequate, that he was not good with money, and that he was just a bad person. However, the petitioner has not provided probative information substantiating that his feelings were the result of his former spouse's extreme cruelty as set out in the statute and regulation. As noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." In this matter, the petitioner has failed to establish that S-M-'s actions rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The AAO does not find that the petitioner's personal statement or the statements that he provided to [REDACTED] demonstrate that he was the victim of any act or threatened act of physical violence or extreme cruelty or that S-M-'s non-physical behavior was accompanied by any coercive actions or threats of

harm or that her actions were aimed at insuring dominance or control over him. The record is simply insufficient in this regard. The AAO finds for example, that the petitioner has not provided a definitive statement that demonstrates in probative detail that his former spouse attempted to control him financially, coerce him regarding sexual relations, or undertake any sort of threat regarding his immigration status during the marriage.

The AAO has reviewed the affidavits of [REDACTED] and [REDACTED]. First, the AAO acknowledges that the petitioner is not required to provide eye witness accounts of abuse to establish eligibility for this benefit. To the extent the director implied that corroborating testimony of abuse is required, the AAO withdraws the director's statement in that regard. However, the affidavits submitted on the petitioner's behalf do not indicate that the petitioner's former spouse subjected him to extreme cruelty. [REDACTED] noted that the petitioner told him of the couple's disagreement over starting a family and a "happy relationship" and that from what he could tell the petitioner's spouse had not "made it easy." There is nothing in [REDACTED] affidavit that provides information regarding specific instances of behavior that constitute battery or extreme cruelty. Similarly, [REDACTED] noted that the petitioner became an introvert and felt betrayed by his former spouse's unwillingness to have children. Again, however, there is nothing in the affidavit that demonstrates that the petitioner's former spouse subjected the petitioner to battery or extreme cruelty as set out in the statute and regulation. Although the affiants speak generally of their concern for the petitioner, the affiants do not provide detailed statements regarding specific incidents that could be construed to constitute extreme cruelty as set out in the regulation. The affidavits submitted on the petitioner's behalf are not probative in establishing that the petitioner was subjected to extreme cruelty as set out in the statute and regulation.

The AAO has also reviewed [REDACTED] evaluation of the petitioner as well as the petitioner's medical records provided. The AAO finds that the petitioner has not provided evidence that his medical condition was causally connected to specific abuse by his United States citizen spouse. The medical records do not provide the necessary detail of underlying traumas or causative factors that support a conclusion that his medical condition is due to any claimed abuse experienced at the hands of his United States citizen spouse. Additionally, the AAO finds that neither the petitioner's former spouse's medical condition of rheumatic fever nor her need for a prescription for Xanax evidences a form of extreme cruelty perpetrated upon the petitioner.

The AAO acknowledges [REDACTED] opinion that the petitioner suffers from a degree of depression and post traumatic stress disorder and recommended that the petitioner could benefit from joining a support group. The AAO observes that [REDACTED] based her opinion of the petitioner's spouse behavior on the petitioner's statements that his former spouse threw and broke things during arguments, tried to provoke the petitioner to hit her, refused to have sexual intercourse with him, made threats about not filing his papers or having him deported if he did not sign over the salon he helped his father-in-law buy, called him bad names and criticized his appearance, abandoned him, invaded his privacy, and insulted his family. None of the behaviors [REDACTED] describes is sufficiently detailed to conclude that the petitioner's former spouse subjected the petitioner to extreme cruelty as defined in the statute and regulation. The AAO also notes that the petitioner

added information regarding S-M-'s threats about filing the petitioner's immigration papers and having the petitioner deported in his statements to [REDACTED]. The AAO finds that the absence of this information from the petitioner's personal statement undermines the veracity of the petitioner's statements [REDACTED]. The AAO notes that although [REDACTED] opined that the petitioner's former spouse fit the profile of an abuser, she did not interview S-M-. Neither did she provide the causal connection between the claimed abusive behaviors of the petitioner's former spouse which purportedly caused the petitioner's degree of depression and post traumatic stress disorder. Further, as determined above, the claimed abusive behavior of the petitioner's former spouse does not include actions that constitute battery or extreme cruelty under the statute and regulation. The petitioner's vague references to threats and to derogatory name calling and criticism of his appearance are insufficient to demonstrate extreme cruelty as described in the statute and regulation. In this matter, while we do not question [REDACTED] professional training and experience, the report submitted does not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's depression and post traumatic stress disorder.

When evaluating the record as a whole, the AAO finds the record lacks information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The record includes generic information and a lack of detailed instances of the claimed abuse. The AAO is aware of the difficulties of obtaining information to establish eligibility for this benefit; however, the petitioner must provide credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. In this matter, he has failed to do so. The petitioner in this matter has not provided sufficient probative evidence to establish that he was subjected to battery or extreme cruelty perpetrated by his former spouse.

Although the director noted in his decision that the petitioner is subject to the provisions of section 204(c) of the Act, the AAO shall not discuss this issue, as the petitioner is ineligible for the benefit he is seeking based upon his failure to establish that he was subjected to battery or extreme cruelty by his spouse. Additionally, beyond the decision of the director, the petitioner has not established a qualifying relationship with his former spouse. As indicated above, the petitioner states that he is divorced from S-M-, but does not provide a copy of the divorce judgment. Thus, it is not possible to conclude that the petitioner was in a qualifying relationship with his former spouse when the petition was filed. As the AAO affirms that the petitioner has not established that he has been subjected to battery or extreme cruelty perpetrated by his former spouse, the petition must have been filed during the couple's marriage to establish a qualifying relationship. The petitioner, therefore, has not established his eligibility pursuant to sections 204(a)(1)(A)(iii)(II)(aa) and (cc) 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 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings 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.