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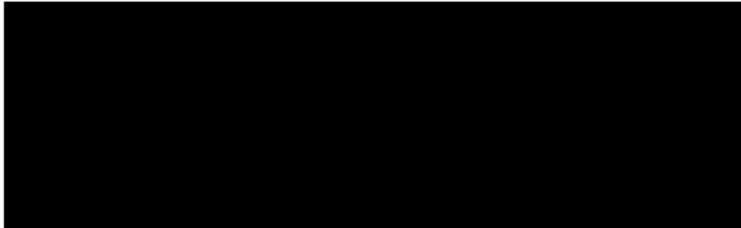
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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Office: VERMONT SERVICE CENTER

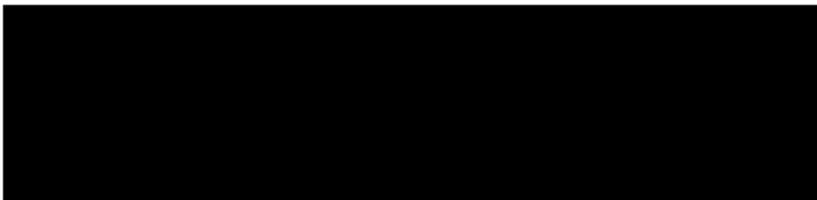
Date: **OCT 06 2010**

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:

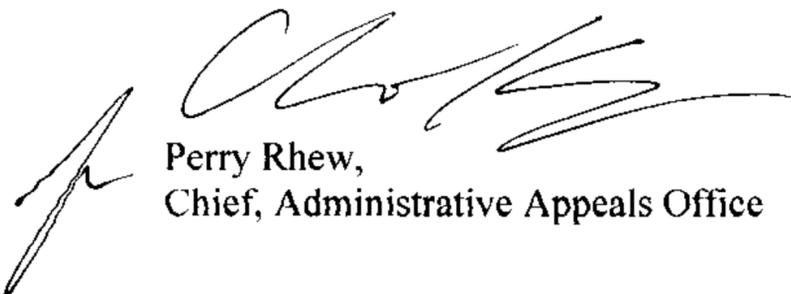


INSTRUCTIONS:

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 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)(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 denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that he and his wife shared a joint residence; (2) that his wife subjected him to battery or extreme cruelty during their marriage; and (3) that he married his wife in good faith. On appeal, counsel submits a letter and additional evidence.

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, the following:

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.

- (vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

- (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 standard and 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.

* * *

- (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.
- (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.
- (v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner

may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

- (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 petitioner, a citizen of Colombia, married L-M-,¹ a citizen of the United States, on [REDACTED]. He filed the instant Form I-360 on April 16, 2008. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on December 31, 2009.

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 affirms the director's determinations that the petitioner has failed to establish that he resided with L-M-; that he was subjected to battery or extreme cruelty by L-M-; and that he married her in good faith. Beyond the decision of the director, the AAO finds further that the petitioner has failed to establish that he is a person of good moral character.

Joint Residence

The first issue before the AAO on appeal is whether the petitioner shared a joint residence with L-M-. On the Form I-360, the petitioner stated that he and L-M- lived together from February 17, 2005 until May 6, 2006.

The AAO agrees with the director's determination that the evidence of record does not establish that the petitioner resided with L-M-. The record contains generalized testimony from the petitioner and his friends asserting that he and L-M- resided together, as well as a copy of the petitioner's [REDACTED] Driver's License and copies of two documents he received from U.S. Citizenship and Immigration Services (USCIS) displaying the couple's purportedly joint address. This evidence is insufficient to establish that the petitioner and L-M- resided together. The petitioner's testimony does not

¹ Name withheld to protect individual's identity.

establish that he resided with L-M-, as he provides no probative information about that allegedly joint residence. For example, he does not describe their home, their home furnishings, their jointly-owned belongings, their neighborhood, their neighbors or their shared, residential routines. Nor do the petitioner's friends provide any of this information. In the absence of detailed, probative testimony, the driver's license and correspondence from USCIS are insufficient to establish that the petitioner shared a residence with L-M-.

Considered in the aggregate, the evidence of record fails to demonstrate that the petitioner resided with L-M-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The second issue before the AAO on appeal is whether the petitioner has established that L-M- subjected him to battery or extreme cruelty during their marriage.

In the undated statement he submitted at the time he filed the petition, the petition reported that although the marriage started well, L-M- soon became hostile toward him, told him that marrying him had been a mistake, and asked him to return to Colombia. The petitioner stated that he refused to return to Colombia and, although he tried to reconcile with L-M- she refused, and her attitude became worse. The petitioner stated that L-M- hit, kicked, and pushed him; humiliated him; refused to have sex with him; took away his keys; and constantly reminded him that he was living in her house. The petitioner recounted an incident during which he made a cup of hot coffee for L-M-, and she threw it in his face. The petitioner stated that L-M- warned him that if he did not leave her home she would cut up his clothing with scissors and, when he failed to leave, she followed through on her threat. The petitioner stated that, eventually, L-M- packed his clothing into a suitcase and brought it to him at his place of employment. He moved in with a friend and, several days later, L-M- called him and asked him to sign divorce papers. The petitioner stated that when he did not sign the document, L-M- became aggressive and insulted him, and told him not to call her. The petitioner stated that L-M- began harassing him, and that he had to move to [REDACTED] to get away from her. The petitioner stated that L-M- called him every day, and told him that if he remained in the United States she would either have him deported or kill him.

In his September 9, 2009 letter, [REDACTED] stated that the petitioner told him that he and L-M- were having serious problems, and that he could tell the petitioner was deeply depressed. In his January 20, 2010 letter, [REDACTED] stated that L-M- humiliated the petitioner, insulted him, and kicked him out of the house.

In his September 11, 2009 letter, [REDACTED] stated that he rented a room to the petitioner after L-M- made him leave her home. According to [REDACTED] the petitioner told him that L-M- rejected him and kicked him out of the house. [REDACTED] recounted that L-M- sometimes came to the house to see the petitioner, and after one visit during which the petitioner asked L-M- to reconcile with him, she verbally abused him.

The petitioner also printed a "Chart Review Print" from the [REDACTED] which he visited on October 16, 2009. According to this printout, the petitioner told [REDACTED] that L-M- "took a sudden decision" soon after the petitioner arrived in the United States that she no longer wanted to be married to him, and that she did not take into account how that decision would affect the petitioner. The printout also states that the petitioner told [REDACTED] that although L-M- "was not physical" with him, she verbally abused the petitioner and that as a result of that abuse, he was depressed and unable to sleep.

The petitioner also submitted a November 9, 2009 evaluation from [REDACTED], a psychiatrist. [REDACTED] stated that the petitioner told him that L-M- became increasingly critical of him during the second month of their marriage, and told him that she did not love him anymore, that he spoke too loudly, and that she wanted him to return to Colombia. He stated that the petitioner also told him that L-M- was verbally abusive, and that she humiliated the petitioner with her insults and harassment. [REDACTED] stated that as a result of L-M-'s behavior the petitioner was in psychological distress, and that he was extremely frustrated, sad, and tearful; and that he suffered from insomnia, nightmares, flashbacks, poor appetite, weight loss, and loss of interest in life. [REDACTED] stated that the petitioner suffered from Post Traumatic Stress Disorder (PTSD). The record includes a copy of a prescription for Paxil that [REDACTED] wrote for the petitioner on November 9, 2009.

In his January 25, 2010 letter, [REDACTED] repeated his earlier statements and added that the petitioner told him that L-M- was all-powerful, insensitive, cruel, and lacking in empathy because when she made the petitioner leave her home, he was forced to spend two weeks living with a friend. [REDACTED] also stated that the petitioner "has shown significant symptoms of PTSD," and that he has experienced dissociated states lasting for days and weeks at a time. In addition to the symptoms listed in his first letter, [REDACTED] stated that the petitioner had also suffered trauma, helplessness, persistent reliving of the traumatic events, weight loss, problems with regulating his emotions, suicidal indications, explosive anger, alterations in self-perception, shame, guilt, and isolation.

In her January 25, 2010 letter, [REDACTED], a psychotherapist, stated that she has been treating the petitioner for PTSD since September 2009, and that his symptoms have improved since that time.

In his January 29, 2010 letter submitted on appeal, counsel states that the petitioner "has been under psychological treatment due to the fact that he is affected by the separation he suffered from [L-M-]," and that L-M- had "the clear intention to place [him] in such a situation that he could be deported."

The AAO has reviewed the entire record and finds that when considered in the aggregate, the relevant evidence fails to establish that L-M- subjected the petitioner to battery or extreme cruelty during their marriage. Although the petitioner claimed in his initial statement that L-M- hit him, pushed him, and kicked him, [REDACTED] and [REDACTED] do not indicate that the petitioner made such claims in their meetings with him, and the printout submitted from the [REDACTED] indicates that the petitioner specifically told [REDACTED] that L-M- was

never physically abusive. This inconsistency between the petitioner's testimony in his initial statement to USCIS and his statements to [REDACTED] and [REDACTED] undermines the probative value of his testimony. The petitioner has not established that he was subjected to battery perpetrated by L-M-.

Nor does the record demonstrate that L-M-'s non-physical behavior constituted extreme cruelty. Although that behavior as described by the petitioner may have been unkind and inconsiderate, he has failed to establish that her actions were comparable to the types of 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. Nor has the petitioner established that L-M-'s behavior was accompanied by other coercive actions or that her behavior was aimed at insuring dominance or control over the petitioner. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." *See Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)).

The petitioner has failed to establish that L-M- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

The third issue before the AAO on appeal is whether the petitioner has established that he married L-M- in good faith. In the February 2004 statement that he submitted in connection with the fiancé visa petition L-M- filed on his behalf, the petitioner stated that although he and L-M- dated and fell in love as adolescents, they were kept apart by family members because their mothers are cousins. The petitioner stated that L-M- eventually moved to the United States, and they both married other people. They met again at the funeral of L-M-'s father in 2003, and began dating shortly thereafter. In the undated statement he submitted at the time he filed the instant petition, the petitioner stated that L-M- filed a fiancé visa on his behalf in 2004, that it was approved in February 2005, and that they married in March 2005. Finally, in his January 25, 2010 letter submitted on appeal, the petitioner looked to USCIS approval of the fiancé visa L-M- had filed on his behalf as evidence of his good faith entry into the marriage.

The petitioner also submitted letters from [REDACTED] and [REDACTED] regarding his good faith entry into the marriage. [REDACTED] stated in his September 9, 2009 letter that he has known the petitioner for fifteen years, and that he knows him very well. In his January 20, 2010 letter, [REDACTED] reiterated that he has been friends with the petitioner for many years. [REDACTED] indicated in his September 11, 2009 letter that he did not meet the petitioner until he had already married L-M- and they were having marital problems. Finally, in his January 23, 2010 letter, [REDACTED] stated that he has known the petitioner for 26 years, and that he believes the petitioner married L-M- because he loved her.

As further evidence of his good faith entry into the marriage, the petitioner submitted pictures, printouts of electronic mail messages that L-M- and the petitioner sent to one another; a hotel receipt; and information regarding trips L-M- took to Colombia during the couple's courtship to visit the petitioner.

The AAO has reviewed the entire record and finds that, in sum, the relevant testimonial and documentary evidence fails to establish that the petitioner married L-M- in good faith. The statements submitted by the petitioner and his affiants lack probative detail providing insight into the petitioner's intentions upon entering into the marriage: they provide no information regarding any shared experiences apart from the alleged abuse. The pictures of the couple's wedding day document that event, but do not establish the petitioner's good-faith entry into the marriage, and the other photographs demonstrate only that the petitioner and L-M- were pictured together on a few occasions. Nor do the printouts of electronic mail messages that the petitioner and L-M- allegedly sent one another during their courtship establish that the petitioner married in good faith, as they are in the Spanish language. Because the petitioner failed to submit certified translations of these printouts, the AAO cannot determine whether they support his claim. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, they are not probative and will be accorded no evidentiary weight in this proceeding. Nor does the evidence that L-M- traveled to Colombia on several occasions prove that the petitioner married her in good faith. Even if the AAO were to assume that L-M- in fact took these trips to visit the petitioner in Colombia, this evidence would speak to the intentions of L-M-, and not those of the petitioner.

With regard to the petitioner's assertions regarding the fiancé petition that L-M- filed on his behalf, the AAO notes that approval of a Form I-129F, Petition for Alien Fiance(e), under section 214(d) of the Act is not prima facie evidence of the beneficiary's good-faith entry into the subsequent marriage under section 204(a)(1)(A)(iii) of the Act. The statutory and regulatory framework for fiancé(e) petitions significantly differs from the requirement that self-petitioners under section 204(a)(1)(A)(iii) of the Act demonstrate that they "entered into" the marriage with the abusive U.S. citizen "in good faith." The U.S. citizen petitioner bears the burden of proof in fiancé(e) cases to establish prospectively that the petitioner and beneficiary intend to and are able and willing to enter a valid marriage. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). The corresponding regulation does not, however, define what constitutes a "bona fide intention to marry" under section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). In contrast, for self-petitions under section 204(a)(1)(A)(iii) of the Act, the alien bears the burden of proof to establish that she or he entered into the marriage in good faith and the regulation specifically defines the term "good faith marriage" and what types of evidence will suffice to meet that eligibility criterion. 8 C.F.R. §§ 204.2(c)(1)(ix), (c)(2)(vii). Hence, the fact that a self-petitioner was the beneficiary of an approved Form I-129F filed by his or her spouse will not establish that the alien actually entered into the marriage in good faith. Moreover, while evidence submitted with a Form I-129F petition filed on the alien's behalf may be relevant to a determination of the alien's good faith entry into the subsequent marriage, reliance on such evidence alone is unwarranted. In such instances, the U.S. citizen petitioner would have borne

the burden of proof in the fiancé(e) case and reliance on the abusive spouse's representations of the alien's intentions at the time of their engagement is of little probative value.

The petitioner has failed to establish that he entered into marriage with L-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

Beyond the decision of the director, the petition may not be approved for another reason, as the record fails to establish that the petitioner is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in April 2005 and ending in April 2008).

The record contains a state-issued criminal background check, issued by [REDACTED]. However, there is no such evidence covering the petitioner's residence [REDACTED] and, according to the petitioner, he lived [REDACTED] with L-M- until May 6, 2006 and, after he moved out of her residence, lived with [REDACTED] for an unspecified period of time. Accordingly, he has failed to establish that he is a person of good moral character. For this additional reason, the petition may not be approved.

Conclusion

On appeal, the petitioner has failed to overcome the director's grounds for denial and has not established that he jointly resided with L-M-; that she subjected him to battery or extreme cruelty; or that he married her in good faith. Beyond the decision of the director, the AAO finds further that the petitioner has failed to establish that he is a person of good moral character. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

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 appeal is dismissed.