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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: JAN 22 2014

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]

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)

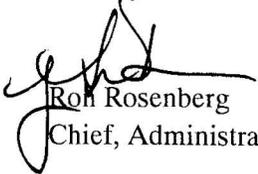
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
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 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 U.S. citizen.

The director denied the petition for failure to establish that the petitioner has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, and that the petitioner resided with his wife and entered into marriage with her in good faith. Beyond the director's decision, the record also shows that the petitioner is subject to the bar on approval of petitions based on marriages entered into while the alien was in removal proceedings at section 204(g) of the Act.

On appeal, counsel submits a brief that addresses extreme cruelty only, even though extreme cruelty is not a ground of denial, and fails to discuss the grounds of denial of joint residence and good faith marriage in any probative detail. Counsel also submits additional evidence on appeal.

Relevant Law and Regulations

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 further 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:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of . . . section 204(g) of the Act

(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 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:

(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 indicates that the petitioner was in removal proceedings at the time of his marriage.¹ In such a situation, section 204(g) of the Act prescribes:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien's right to remain in the United States], until the

¹ The petitioner was ordered removed by an immigration judge on January 13, 2000, and married his U.S citizen spouse on February 17, 2002.

alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after his marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, which states in pertinent part:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

8 U.S.C. § 1255(e) (emphasis added).

The corresponding regulation at 8 C.F.R. § 204.2(a)(1)(iii) states, in pertinent part:

Marriage during proceedings – general prohibition against approval of visa petition. A visa petition filed on behalf of an alien by a United States citizen . . . shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in . . . removal proceedings, or judicial proceedings relating thereto. . . . [T]he burden in visa petition proceedings to establish eligibility for the exemption . . . shall rest with the petitioner.

(A) *Request for exemption.* . . . The request must be made in writing The request

must state the reason for seeking the exemption and must be supported by documentary evidence establishing eligibility for the exemption.

(B) *Evidence to establish eligibility for the bona fide marriage exemption.* The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit include, but are not limited to:

- (1) Documentation showing joint ownership of property;
- (2) Lease showing joint tenancy of a common residence;
- (3) Documentation showing commingling of financial resources;
- (4) Birth certificate(s) of child(ren) born to the petitioner and beneficiary;
- (5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or
- (6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

Pertinent Facts and Procedural History

The petitioner is a citizen of India who entered the United States without inspection on April 27, 1996. On May 12, 1996, the petitioner was placed in removal proceedings, and proceedings terminated when the removal order was executed on March 25, 2013. The petitioner married S-G-², a U.S. citizen, in Nevada on February 17, 2002, thus subjecting himself to the bar on approval of immigrant petitions based on marriages entered into while the alien is in removal proceedings at section 204(g) of the Act.³ He filed the instant Form I-360 on February 4, 2011. The petitioner subsequently received a Request for Evidence (RFE) that, among other things, the petitioner's first marriage was legally terminated, and the petitioner resided with his second spouse and married her in good faith. Counsel responded to the RFE with additional evidence, which the director found insufficient, and denied the petition.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On a full review of the record, we find the petitioner has demonstrated a qualifying relationship with a U.S. citizen, but the petitioner has not established eligibility for immigrant classification under section 201(b)(2)(A)(i) of the Act based on that relationship, and he has not demonstrated that he resided with

² Name withheld to protect the individual's identity.

³ See 8 C.F.R. § 245.1(c)(8)(ii)(A) (Section 204(g) of the Act applies and proceedings remain pending until the removal order is executed and the alien departs the United States, is found not to be removable or the proceedings are otherwise terminated.).

his U.S. citizen spouse and married her in good faith. Beyond the director's decision, the petitioner is barred from having this petition approved under section 204(g) of the Act.

Qualifying Relationship

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) provides that evidence for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act requires that the petitioner submit evidence of the marital relationship, including proof of the termination of all prior marriages, and evidence of the citizenship of the U.S. citizen spouse. In denying the petition, the director determined that the submitted evidence did not demonstrate that the petitioner and S-G- had a valid marriage because no evidence demonstrated the legal termination of the petitioner's first marriage. On appeal, counsel submits a copy of the final decree of divorce of the petitioner's first marriage. This court document indicates that the petitioner's first marriage was legally terminated on November 28, 2001. The petitioner, therefore, has established that he has a qualifying relationship as the spouse of a U.S. citizen, and the negative finding of the director under this requirement is hereby withdrawn.

Joint Residence

De novo review of the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner and his second wife shared a joint residence. On the Form I-360, the petitioner stated that he resided with his second wife at [REDACTED] "up [sic] to October 6, 2010." The record below contains the following: an affidavit from the petitioner; an affidavit from the petitioner's mother, [REDACTED] an affidavit from his sister, [REDACTED] joint income tax records for 2002 through 2009; bank account records; check card records; and photographs. In his affidavit the petitioner claimed that he and his second wife lived at an apartment in [REDACTED] before moving to his sister's house in [REDACTED] and then to an apartment near his sister. The petitioner stated that his last residence with his second wife was his daughter-in-law's apartment, but the petitioner does not describe in his affidavit any of his and S-G-'s shared residences, belongings, or experiences in any probative detail, apart from the abuse.

[REDACTED] and [REDACTED] recounted in their affidavits that the petitioner and S-G- briefly rented an apartment before moving into [REDACTED] house, where they lived for a short time before moving to a nearby apartment. [REDACTED] stated that the petitioner moved into her house alone in January 2008, and afterwards S-G- moved in, but they lived with her for a brief time before moving to the apartment of S-G-'s daughter in [REDACTED]. The petitioner's sister and mother do not describe the petitioner's claimed residences with S-G- in any probative detail, and thus their affidavits carry insufficient evidentiary weight to demonstrate the petitioner and S-G-'s shared residence.

Many of the copies of the petitioner and S-G-'s joint tax records are either unsigned or self-prepared and unaudited, and are not accompanied by any evidence that they were actually filed with the Internal Revenue Service (IRS). While the bank account statements show the names of the petitioner and S-G-, many of the statements reflect little or no account activity, lack detailed information about deposits and withdrawals, and do not show that the petitioner and S-G- used the account for shared

savings or expenses. Although the check card statement in the name of the petitioner shows the same address as the statement in the name of S-G-, the petitioner's statement has a different check card number from that of S-G-. In addition, while the petitioner claimed to have resided with S-G- at different locations, the petitioner's joint documents, which date from 2002-2010, are not consistent with his claim because they all show the address of the house of [REDACTED] the petitioner's sister.

The photographs show the petitioner's wedding ceremony, and the petitioner and S-G- at other locations on unspecified dates, but the photographs provide no probative information to demonstrate that the petitioner shared a residence with his second wife during their marriage.

On appeal, counsel states that the petitioner and his second wife lived together at the [REDACTED] apartment from August 2010 to October 6, 2010. Counsel asserts that the petitioner and S-G- lived at the petitioner's sister's house on [REDACTED] for most of their marriage and did not sign any formal lease, but counsel's assertion is inconsistent with the petitioner and his mother and sister's claim that the petitioner resided with his second wife at [REDACTED] house for a short time.

Counsel refers to new evidence of joint bank records, business records, and a vehicle insurance policy to demonstrate that the petitioner resided with his second wife. These documents are dated 2002 to 2010 and are in the names of the petitioner and his second wife, but the address shown is [REDACTED] house, where the petitioner claimed to have resided with his second wife for only a brief period. Moreover, the bank account statements show little or no account activity, lack detailed information on account activity, and do not indicate that the petitioner and his wife actually used the account for shared savings or expenses. While the business records show that the petitioner and his second wife bought [REDACTED] in 2006, without probative statements from the petitioner or other relevant evidence of his shared residence with his second wife, business records alone are not sufficient to demonstrate that the petitioner actually resided with his second wife during their marriage. Also, the 2006, 2007, and 2008 tax records do not show that the petitioner and his second wife jointly owned [REDACTED]

Counsel asserts that the director did not apply the correct burden or standard of proof of "any credible evidence." In adjudicating the petition, the consideration of any relevant, credible evidence is not a burden or standard of proof, but an evidentiary standard. A self-petitioner must demonstrate his or her eligibility by a preponderance of the evidence, the standard that applies to all immigrant visa petitions. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The determination of what evidence is credible and the weight accorded such evidence lies within the sole discretion of U.S. Immigration and Citizenship Services. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2). In this case, the record shows that the director considered all the relevant evidence in his determination that the petitioner failed to demonstrate that he resided with his second wife during his marriage.

In sum, the preponderance of the relevant evidence in this case does not demonstrate that the petitioner resided with his second wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. The petitioner's joint documents show an address where the petitioner only briefly resided with his

second wife. The petitioner's bank records lack detailed information and show little or no account activity. The tax records are either unsigned or self-prepared and unaudited, and are not accompanied by any evidence that they were actually filed with the IRS. The check card statement for the petitioner does not have the same check card number as his second wife. The photographs provide no probative information to demonstrate that the petitioner shared a residence with S-G- during their marriage. The petitioner does not describe any of their shared residences or experiences in any probative detail. The affidavits from the petitioner's family members do not describe the petitioner's claimed residence with S-G- in any probative detail.

Good-Faith Entry into the Marriage

De novo review of the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner married S-G- in good faith. The record below contains the following: affidavits from the petitioner and his cousin, [REDACTED] mother, [REDACTED] and sister, [REDACTED] joint income tax records for 2002 through 2009; bank account records; check card records; and photographs. The petitioner briefly stated in his affidavit that after his divorce on November 28, 2001, he met S-G- at a clothing store where she was a cashier, and after a few meetings they fell in love. The petitioner recounted that he and S-G- discussed their prior relationships and families, and after S-G- divorced her first husband on December 28, 2001, they wed on February 17, 2002, with his family members attending the marriage ceremony. However, the petitioner failed to discuss in detail how he met his second wife; his period of courtship, the engagement, and wedding; his joint residence with his second wife; or any of his shared experiences with her, apart from the abuse.

The affidavits from the petitioner's cousin, mother, and sister do not provide sufficient probative information to establish that the petitioner married S-G- in good-faith. [REDACTED] briefly stated that the petitioner and S-G- were in love before they married. Ms. [REDACTED] stated that she often spoke to S-G- and helped the petitioner select gifts for S-G-, but Ms. [REDACTED] provided no further information about the petitioner's relationship with his second wife, apart from the abuse. The petitioner's sister asserted that she attended her brother's marriage ceremony and wedding party, and that her brother married S-G- because he fell in love and wanted to start a family. The petitioner's mother stated that her son told her that S-G- was his soul mate, but the petitioner's sister and mother did not substantively describe the petitioner's relationship with his second wife or provide complete information and details about his marriage apart from the abuse.

The joint income tax records, bank account records, check card records, and photographs are not sufficient to demonstrate that the petitioner married S-G- in good faith. The bank account statements show the names of the petitioner and his second wife, but many of the statements lack detailed information about deposits and withdrawals and reflect little or no account activity, and do not show a commingling of financial resources that is expected of a married couple. The check card statements show that the petitioner and S-G- do not share the same check card number. Many of the copies of the petitioner and his second wife's joint tax records are either unsigned or self-prepared and unaudited, and are not accompanied by any evidence that they were actually filed with the IRS. Furthermore, the joint documents date from 2002-2010 and the address shown on all of the documents

is the petitioner's sister's house. The address of the documents conflicts with the claim of the petitioner and his family members that the petitioner and S-G- resided together at several different locations throughout their marriage.

The photographs are of the petitioner's wedding ceremony, the petitioner and S-G- at other locations on unspecified dates, and family and friends of the petitioner, but in the absence of probative statements from the petitioner or other relevant evidence regarding his entry into the marriage, the photographs, standing alone, are not sufficient to establish the petitioner's intentions in marrying his second wife.

Counsel submits new evidence to demonstrate that the petitioner entered into marriage with his second wife in good faith. The new evidence of joint bank records, business records, and a vehicle insurance policy date from 2002-2010 and shows the names of the petitioner and S-G-, but the address on these documents is [REDACTED] house, which is not consistent with the claim of the petitioner and his family members that the petitioner and his second wife lived together at different locations during their marriage. The bank statements date from 2002 to 2007, but the statements lack detailed account activity to demonstrate a comingling of finances between the petitioner and his second wife. While the business records reflect that the petitioner and S-G- bought [REDACTED] together, income tax records for 2006, 2007, and 2008 do not show joint ownership of the business by the petitioner and his second wife, and thus no combining of financial assets and liabilities is demonstrated. Even if the petitioner and his second wife jointly own [REDACTED] the record lacks probative statements from the petitioner regarding his marital relationship, and the business records alone are not enough to demonstrate the petitioner's good-faith entry into marriage.

On appeal, counsel cites to federal court and Board of Immigration Appeal decisions to contend that the petitioner's intent at the time of his marriage determines if he entered into marriage in good faith. Counsel asserts that the affidavits from the petitioner and his family members, as well as other documentary evidence demonstrate the petitioner's good-faith entry into marriage with S-G-.⁴ The cited cases indicate that in determining whether a marriage was entered into in good faith, the inquiry turns on whether the parties intended to establish a life together at the time of marriage, and objective evidence is examined to make this determination. U.S. Immigration and Citizenship Services has sole discretion to determine what evidence is credible and the weight accorded such

⁴ *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975); *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978); *Dabaghian v. Civiletti*, 607 F.2d 868 (9th Cir. 1979); *Cho v. Gonzales*, 404 F.3d 96 (1st Cir. 2005); and *Damon v. Ashcroft*, 360 F.3d 1084 (9th Cir. 2004).

evidence. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2). In the instant case, the relevant objective evidence is not sufficient to demonstrate that the petitioner entered into his marriage in good faith. In his affidavit the petitioner does not provide any detailed, probative information of his intentions in marrying his second wife. Though the petitioner stated that he married his second wife because he fell in love with her, he does not substantively discuss his courtship, wedding, shared residence and experiences, apart from the abuse. The statements from the petitioner's mother, sister, and cousin are brief and lack complete information and detailed knowledge of the petitioner's relationship with his second wife, apart from the abuse. We have discussed the deficiencies in the petitioner's joint documents, and when viewed in the totality, the preponderance of the relevant evidence fails to establish that the petitioner's entry into marriage with his second wife was in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act further Bars Approval

Because the petitioner married his second wife while he was in removal proceedings and did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard.") To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

As the petitioner failed to establish his good-faith entry into his second marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his second marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

Because the petitioner is not exempt from section 204(g) of the Act, he has also failed to demonstrate his eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

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NON-PRECEDENT DECISION

Page 11

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.