



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: **OCT 23 2014**
Self-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)

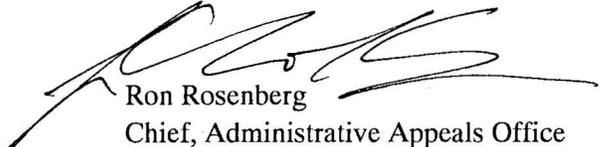
ON BEHALF OF PETITIONER:

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 (“the 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 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 his former U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner is a person of good moral character, entered into a good-faith marriage, and was eligible for a bona fide marriage exemption from section 204(g) of the Act. On appeal, counsel submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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).

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 petitioner in this case was in removal proceedings at the time of his marriage. In such a situation, section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes, in pertinent part:

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

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, 8 U.S.C. § 1255(e), which states:

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 regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(Emphasis added).

The eligibility requirements for an abused spouse 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)(1), which states, in pertinent part:

- (i) . . . (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse]. . . .
- (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. . . .

(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. . . .

(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 explained in 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. . . .

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Venezuela who entered the United States on June 29, 2002, as a nonimmigrant visitor. On January 2, 2008, the petitioner was served with a Notice to Appear for removal proceedings before the [REDACTED], Ohio, Immigration Court. The petitioner married Z-M-¹, a U.S. citizen, on September [REDACTED] in [REDACTED], Ohio. The marriage ended in divorce on July 30, 2012. The petitioner filed the instant Form I-360 self-petition on November 26, 2012. The director subsequently issued a Request for Evidence (RFE) and a Notice of Intent to Deny (NOID) for, among other things, the petitioner's good moral character, his entry into the marriage in good faith, and his eligibility for the bona fide marriage exemption from the bar to approval of his self-petition under section 204(g) of the Act because he married Z-M- while he was in removal proceedings. The petitioner, through counsel, responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal overcome one, but not all, of the director's grounds for denial and the appeal will be dismissed for the following reasons.

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

¹ Name withheld to protect the individual's identity.

period beginning in November 2009 and ending in November 2012). The petitioner submitted criminal records showing he was convicted of: possessing criminal tools in violation of Ohio Revised Code § 2923.24 in March 2010; three traffic offenses in January and July 2012 in Cleveland and [REDACTED] Ohio; the selling of beer or intoxicating liquor to minors in violation of Cleveland Codified Ordinance § 617.02 in March 2013; and disorderly conduct in violation of [REDACTED] Ordinance § 648.04 in April 2013. The director found that the petitioner's misdemeanor conviction for possessing criminal tools was a crime involving moral turpitude, which barred a finding of his good moral character under section 101(f)(3) of the Act.

The director incorrectly determined that section 101(f)(3) of the Act applied to the petitioner's conviction. Section 101(f)(3) of the Act bars a finding of good moral character for any alien "described in" section 212(a)(2)(A) of the Act. While section 212(a)(2)(A)(i)(I) of the Act describes any alien convicted of a crime involving moral turpitude, subsection 212(a)(2)(A)(ii)(II) of the Act explicitly excludes from that definition any alien convicted of a crime for which the maximum penalty did not exceed one year and the alien was not sentenced to a term of imprisonment exceeding six months. 8 U.S.C. § 1182(a)(2)(A)(ii)(II). This provision is commonly referred to as the petty offense exception. In this case, the record shows that on March [REDACTED] the petitioner pled guilty to a first degree misdemeanor charge of possessing criminal tools under Ohio Revised Code § 2923.24 and was ordered to pay court costs and \$60,000 in restitution. In Ohio, the maximum sentence of imprisonment for a first degree misdemeanor is 180 days. See OHIO R.C. § 2929.24(A)(1) (West 2010). The petitioner was not sentenced to any term of imprisonment. Consequently, the petitioner's conviction falls within the petty offense exception to classification as a crime involving moral turpitude and section 101(f)(3) of the Act does not apply.

Nonetheless, the record still shows that the petitioner lacks good moral character for other reasons. Section 101(f) of the Act states, in pertinent part, that "[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further prescribes that, "[a] self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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."

Here, the petitioner has three recent criminal convictions indicating a lack of good moral character, two of which occurred while this self-petition was pending. In addition, although the petitioner submitted a statement below, he did not acknowledge his criminal record, did not assert he has been rehabilitated, or otherwise address his moral character, thereby failing to submit the primary evidence of his good moral character required by the regulation at 8 C.F.R. § 204.2(c)(2)(v). The petitioner also submitted no evidence that any of his offenses were committed under extenuating circumstances. Although the record includes several letters describing the petitioner as a hard-working, polite, and good person, the letters consist of only a few sentences and fail to mention the petitioner's criminal convictions, an omission indicating that the authors cannot knowledgeably attest to the petitioner's good moral character, as required of supporting affidavits pursuant to 8 C.F.R. § 204.2(c)(2)(v). The petitioner

has thus failed to demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Entry into the Marriage in Good Faith

In his personal statement, the petitioner gave a probative, credible, and detailed account of how he first met Z-M-, their courtship, and shared experiences. He explained that he first saw Z-M- when she was working in a shopping mall and that because they are both Muslim, he had to obtain her mother's telephone number in order to get permission to speak to her. The petitioner recounted how a meeting was arranged and that there was an instant attraction when they met. He stated that they liked each other and decided to get married because Muslims do not date, but marry when they are interested in each other. The petitioner recounted that approximately two hundred people attended their engagement party, that he gave Z-M- gold jewelry as is customary in their culture, and submitted numerous pictures from the party. He described in probative detail that they were subsequently able to date without a chaperone because they were engaged and he recounted the particulars of their conversations. The petitioner described their wedding date as one of the happiest moments in his life and that he felt lucky to be with Z-M-. He described specific activities they shared together, including a trip to Detroit for which he submitted photographs of the couple. The record also includes relevant photographs, receipts and several affidavits from family members who attended the wedding and attested to the couple's relationship as husband and wife. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner entered into marriage with Z-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The director's decision to the contrary will be withdrawn.

Section 204(g) of the Act

Although the petitioner established his good-faith entry into his marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he has not provided clear and convincing evidence that his marriage is bona fide under the heightened standard of proof required by section 245(e)(3) of the Act. At the time the petitioner married his former wife, he was in removal proceedings and he did not reside outside of the United States for two years after their marriage; thus, he remains subject to the bar at section 204(g) of the Act. See 8 C.F.R. §§ 204.2(a)(1)(iii), 245.1(c)(8)(ii)(A).

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

(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 the [abused spouse];
- (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.

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 exemption 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, 375 (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.

In this case, the third party affidavits do not provide clear and convincing evidence of the bona fides of the petitioner’s marriage, as prescribed by the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B)(5). The affidavits are almost identical to each other and merely state that the petitioner and Z-M- presented themselves as husband and wife, providing minimal probative information regarding the petitioner’s intent in marrying Z-M-. The affidavits do not conform to the technical requirements of 8 C.F.R. § 204.2(a)(1)(iii)(B)(5) in that they lack the date and place of birth of the affiants. They also do not contain “complete information and details explaining how the person acquired his or her knowledge of the marriage” as required by the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B)(5). For example, [REDACTED] stated that their personal knowledge of the petitioner’s and Z-M-’s relationship is derived from “when they, as a couple, came to our house for a family dinner,” and

claimed that their families visited on several occasions, but they did not discuss in probative detail any of those occasions.

In his own statement, the petitioner described his courtship, wedding and marriage and photographs and receipts further document his engagement and wedding. While relevant and probative, this evidence does not clearly and convincingly establish that the petitioner married Z-M- in good faith. He is consequently ineligible for the bona fide marriage exemption at section 245(e) of the Act and section 204(g) of the Act bars approval of the instant self-petition.

On appeal, counsel contends that the director failed to acknowledge that the Form I-130 relative petition that was filed on the petitioner's behalf was approved after the petitioner and Z-M- were interviewed in person. According to counsel, the approval of the Form I-130 relative petition would not have been possible without establishing his good-faith entry into the marriage. Counsel asserts that the approved relative petition, combined with the other relevant evidence, meets the higher burden of proof required for an exemption from section 204(g) of the Act.

The fact that a visa petition based on the marriage in question was previously approved does not automatically entitle the beneficiary to subsequent immigrant status. *See INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, "the approved petition might not *standing alone* prove . . . that the marriage was bona fide and not entered into to evade immigration laws."). Moreover, although similar, the parties, statutory provisions and benefits procured through sections 204(a)(1)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are not identical. The petitioner's ex-wife was the petitioner and bore the burden of proof in the prior Form I-130 adjudication, in which she was required to establish her citizenship and the validity of their marriage. *See* section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i); 8 C.F.R. §§ 204.1(f), 204.2(a)(2). In contrast, in this case, the petitioner bears the burden of proof to establish not only the validity of their marriage, but also that he entered the marriage in good faith by clear and convincing evidence, a heightened standard of proof. *See* 8 U.S.C. §§ 1154(a)(1)(A)(iii)(II)(cc), 1154(g), 1255(e)(3); 8 C.F.R. §§ 204.2(c)(1)(iv), 245.1(c)(8)(iii)(F). The evidence submitted below and counsel's contentions on appeal do not provide clear and convincing evidence of the petitioner's entry into the marriage in good faith. Accordingly, he has not established his eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act and section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

Beyond the decision of the director, the petitioner is also not eligible for immediate relative classification based on his marriage to Z-M-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act, because he has not complied with, nor is he exempt from, section 204(g) of the Act.² 8 C.F.R. § 204.2(c)(1)(iv).

² 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).

Joint Residence

Beyond the decision of the director, the petitioner also did not show that he resided with his former wife during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. As the petitioner himself conceded in his statement, he and his wife “did not formally live with one another. . . .” *Petitioner’s Personal Statement* at 2. The petitioner left blank the section of his Form I-360 self-petition asking for the dates that he resided with his spouse and in the section requesting the address of their last joint marital residence, the petitioner wrote “not applicable.” In addition, the police reports in the record dated during the marriage identify two different addresses for the petitioner and Z-M-.

The petitioner stated that he often spent the night at Z-M-’s house, but he explained that he and Z-M- agreed not to live together until they had a Muslim marriage ceremony when the petitioner’s father was able to come to the United States. The record indicates that the couple separated before any such ceremony was performed. Section 101(a)(33) of the Act prescribes that, as used in the Act: “The term ‘residence’ means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.” 8 U.S.C. § 1101(a)(33) (2007). The preamble to the interim rule further clarified that “[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser’s home . . . while continuing to maintain a general place of abode or principal dwelling place elsewhere.” 61 Fed. Reg. 13061, 13065 (Mar. 26, 1996). In this case, the petitioner has shown that he frequently visited Z-M- and intended to live with her, but the record shows that he maintained a separate, principal dwelling place during their marriage. Consequently, the preponderance of the relevant evidence demonstrates that the petitioner did not reside with his ex-wife during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has established that he married his former spouse in good faith by a preponderance of the evidence. However, he has not established his good moral character, that he is exempt from the bar to approval of his petition under section 204(g) of the Act, that he is eligible for immediate relative classification based on his previous marriage to Z-M-, or that he resided with her during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.