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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: HARLINGEN, TEXAS Date:
AAO 09 198 50016

OCT 13 2009

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The field office director denied the Form I-600, Petition to Classify Orphan as an Immediate Relative and 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 classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F). The field office director denied the petition on the basis of her determination that the petitioner's spouse had failed to disclose his criminal history. On appeal, counsel contends that the field office director erred in denying the petition.

Section 101(b)(1)(F)(i) of the Act, 8 U.S.C. 1101(b)(1)(F)(i), states that U.S. Citizenship and Immigration Services (USCIS) may not approve an orphan petition unless satisfied that the petitioner will provide proper parental care to the adopted orphan.

The regulation at 8 C.F.R. § 204.3(e) states, in pertinent part, the following:

> (2) *Assessment of the capabilities of the prospective adoptive parents to properly parent the orphan.* The home study must include a discussion of the following areas:
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> * * *
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> (iii) *History of abuse and/or violence—*
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> (A) *Screening for abuse and violence—*
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> (*1*) *Checking available child abuse registries.* The home study preparer must ensure that a check of each prospective adoptive parent and each adult member of the prospective adoptive parents' household has been made with available child abuse registries and must include in the home study the results of the checks including, if applicable, a report that no record was found to exist. Depending on the access allowed by the state of proposed residence of the orphan, the home study preparer must take one of the following courses of action:
>
> (*i*) If the home study preparer is allowed access to information from the child abuse registries, he or she shall make the appropriate checks for each of the prospective adoptive parents and for each adult member of the prospective parents' household;

(*ii*) If the State requires the home study preparer to secure permission from each of the prospective adoptive parents . . . before gaining access to information in such registries, the home study preparer must secure such permission from those individuals, and make the appropriate checks;

(*iii*) If the State will only release information directly to each of the prospective parents . . ., those individuals must secure such information and provide it to the home study preparer. The home study preparer must include the results of these checks in the home study;

(*iv*) If the State will not release information to either the home study preparer or the prospective adoptive parents . . ., this must be noted in the home study;

(*v*) If the State does not have a child abuse registry, this must be noted in the home study.

(*2*) *Inquiring about abuse and violence.* The home study preparer must ask each prospective adoptive parent whether he or she has a history of substance abuse . . . even if it did not result in an arrest or conviction. The home study preparer must include each prospective adoptive parent's response to the questions. . . .

(B) *Information concerning history of abuse and/or violence.* If the petitioner and/or spouse, if married, disclose(s) any history of abuse and/or violence as set forth in paragraph (e)(2)(iii)(A) of this section, or if, in the absence of such disclosure, the home study preparer becomes aware of any of the foregoing, the home study report must contain an evaluation of the suitability of the home for adoptive placement of an orphan in light of this history. This evaluation must include information concerning all arrests or convictions or history of substance abuse . . . A certified copy of the documentation showing the final disposition of each incident, which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action, must accompany the home study.

Additionally, the prospective adoptive parent must submit a signed statement giving details including mitigating circumstances, if any, about each incident. . . .

(C) *Evidence of rehabilitation.* If a prospective adoptive parent has a history of substance abuse . . . the home study preparer may, nevertheless, make a favorable finding if the prospective adoptive parent has demonstrated appropriate rehabilitation . . . The home study report must include all facts and circumstances which the home study preparer has considered, as well as the preparer's reasons for a favorable decision regarding the prospective adoptive parent. . . .

(D) *Failure to disclose or cooperate.* Failure to disclose an arrest, conviction, or history of substance abuse . . . to the home study preparer and to [USCIS] may result in the denial of . . . the . . . petition, pursuant to paragraph (h)(4) of this section.

* * *

(v) *Criminal history.* The prospective adoptive parents and the adult members of the prospective adoptive parents' household are expected to disclose to the home study preparer and [USCIS] any history of arrest and/or conviction early in the advanced processing procedure. Failure to do so may result in denial pursuant to paragraph (h)(4) of this section or in delays. Early disclosure provides the prospective adoptive parents with the best opportunity to gather and present evidence, and it gives the home study preparer and [USCIS] the opportunity to properly evaluate the criminal record in light of such evidence. When such information is not presented early in the process, it comes to light when the fingerprint checks are received by [USCIS]. By that time, the prospective adoptive parents are usually well into preadoption proceedings of identifying a child and may even have firm travel plans. At times, the travel plans have to be rescheduled while the issues raised by the criminal record are addressed. It is in the best interests of all parties to have any criminal records disclosed and resolved early in the process.

The regulation at 8 C.F.R. § 204.3(h)(4) states, in pertinent part, the following:

(h) *Adjudication and decision.*—

> (4) *[A]pplication denied for . . . failure to disclose a criminal history* . . . Failure to disclose . . . a criminal history to the home study preparer and to [USCIS] in accordance with paragraphs . . . (e)(2)(v) of this section may result in the denial of the advanced processing application, or if applicable, the application and orphan petition filed concurrently.

The statutory and regulatory provisions discussed above permit, but do not require, denial of a petition based on a petitioner's failure to disclose an arrest, conviction, or other adverse information. Whether to deny the application is a matter entrusted to the discretion of USCIS. The AAO notes that the USCIS determination is based on protective concerns for the orphan. Therefore, complete knowledge of a petitioner's arrest and criminal history is clearly essential for a proper determination regarding whether the petitioner can provide proper care and a suitable home environment and to an adopted orphan. Accordingly, denial of a petition is often justified when a petitioner fails to make the required criminal history disclosures, unless it is clearly shown that the undisclosed information was immaterial to a discretionary determination regarding whether the petitioner can provide proper care and a suitable home and to an orphan.

The petitioner is a fifty-year-old citizen of the United States. Her husband is a fifty-six-year-old citizen of the United States. They have been married since 1991. The beneficiary was born in the Philippines on October 21, 2005.

The petitioner filed the Form I-600 on November 18, 2005. The field office director issued a request for additional evidence on January 3, 2006, and requested an original home study conducted by a licensed adoption agency or preparer. The petitioner responded to the field office director's request on January 23, 2006, and submitted a home study. That home study, which was completed on January 21, 2006 stated, in pertinent part, the following:

> [The petitioner and her husband] stated that they have never been arrested or convicted of committing a crime . . . They stated that they did not have in the past or present, any issues related to substance abuse. [The petitioner's husband] stated he was sued by an employee of [the couple's business] and it was settled out of court.
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> * * *
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> Neither [the petitioner nor her husband] . . . has a criminal history.

On April 6, 2006, the field office director issued a second request for additional evidence, which addressed several deficiencies in the petitioner's home study. In particular, the AAO notes that the field office director notified the petitioner that an amendment to the home study was required, and that such amendment needed to address whether the petitioner and her husband had ever received an unfavorable home study, and whether the names of the petitioner and her husband had been checked

in a child abuse registry. The field office director's April 6, 2006 notice also scheduled the petitioner and her husband for fingerprinting on April 18, 2006.

The results of the petitioner's husband's fingerprint check, which were received on April 27, 2006, indicated that the petitioner's statement to the home study preparer that he had never been arrested, that he had never had any issues related to substance abuse, and that he did not have a criminal record were not accurate. Rather, the results of that fingerprint check indicated that the petitioner's husband had in fact been arrested on three occasions: (1) he was charged with possession of marijuana in April 1972; (2) he was charged with assault causing bodily injury in June 2005; and (3) he was charged with retaliation in August 2005.

The field office director issued a third request for additional evidence on April 27, 2006, which notified the petitioner of the results of her husband's fingerprint check. The field office director notified the petitioner that the dispositions for the three matters was unknown, and requested, in pertinent part, the following: (1) original, certified copies of the dispositions for all three arrests; (2) an amendment or addendum to the home study addressing the arrests; and (3) a signed statement from the petitioner's husband regarding each arrest.

The petitioner responded to the field office director's requests on August 3, 2006, and submitted several documents. The AAO takes particular note of the following documents:

- An April 24, 2006 letter from the Harlingen, Texas Police Department, which stated that the petitioner's husband had been charged with the crimes of assault and obstruction/retaliation on June 28, 2005. The disposition of the assault charge was listed as "$1,500 bond," and the disposition of the obstruction/retaliation charge was listed as "$5,000 bond."
- A November 30, 2005 "Order of Dismissal" relating to the retaliation charge, which stated that "[t]he words and action of the defendant do not amount to an unlawful act."
- A March 23, 2006 "Order of Dismissal" relating to the assault charge,[1] which stated that the case had been "[r]ejected at request of complaining witness."
- A "Petition for Expunction of Records," filed by counsel for the petitioner's husband on May 8, 2006. In her petition, counsel requested that the Court order that all records and files relating to the petitioner's husband's arrests in 1972 and 2005 be expunged. The AAO takes particular note of counsel's assertions that all charges were dismissed; that no charges are still pending; and that none of the charges resulted in a final conviction.
- An August 3, 2006 "Order of Expunction" issued by the District Court for the 357th Judicial District for Cameron County, Texas. The Court ordered that any and all records relating to the petitioner's husband's 2005 arrest for "the offense of assault causes bodily injury family member" be expunged. The AAO notes that the Court did not order the expunction of

[1] The AAO notes that this charge was dismissed on March 23, 2006, more than two months *after* the home study was prepared. As such, it appears as though this case was still ongoing at the time the petitioner's husband told the home study preparer he had never been arrested.

records relating to the 2005 arrest for retaliation or the 1972 arrest for possession of marijuana.

- An April 14, 2006 addendum to the petitioner's home study, which confirmed that the petitioner and her husband had never received an unfavorable home study in the past. This addendum did not, as requested, discuss the criminal history of the petitioner's husband, nor did it discuss whether the preparer of the home study had searched for the petitioner and her husband in a child abuse registry.

The petitioner did not submit, as requested, the following: (1) an amendment or addendum to the home study addressing the criminal history of the petitioner's husband, as well as confirming whether the couple's names had been searched in a child abuse registry; (2) documentation regarding the final disposition of the petitioner's husband's 1972 arrest for marijuana possession (or an explanation as to why such documentation is unavailable); or (3) a signed statement from the petitioner's husband regarding each of his arrests.

As the petitioner's August 3, 2006 response did not fully address the field office director's requests of April 6 and April 27, 2006, the field office director issued a fourth request for additional evidence on October 20, 2006. This request for additional evidence contained, among other items, another request for the certified court disposition regarding the petitioner's husband's 1972 arrest for possession of marijuana.

The petitioner replied to this portion of the request for additional evidence on November 27, 2006.[2] In her November 21, 2006 letter, the petitioner stated that the "attached documents" were submitted in response to the field office director's request for the disposition of the beneficiary's husband's 1972 arrest. However, the AAO notes that such response did not include any certified documents relating to that arrest, nor did it include an explanation as to why such documents were unavailable. Although it contained a November 17, 2006 letter from the Office of the District Clerk, Criminal Department, of Cameron County, Texas, which stated that the petitioner's husband had no felony indictment, and no felony conviction, between 1972 and the present. That letter, however, is deficient, as it does not specifically reference the petitioner's 1972 arrest. For example, if the crime for which he was arrested was not a felony, or if he entered into a plea agreement and was later charged with a misdemeanor, such subsequent history would not be included in this letter. Nor does this letter indicate that documentation from his 1972 arrest is unavailable.

The field office director issued a fifth request for additional evidence on June 5, 2007. The field office director again requested a signed statement from the petitioner's husband supplying the details and circumstances surrounding each of his arrests. The field office director also requested, again, that the petitioner submit an addendum to the home study which discussed her husband's arrest history, as well as confirming whether the couple's names had been searched in a child abuse registry.

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[2] The petitioner replied to another portion of the field office director's October 20, 2006 request, which related to the capability of the beneficiary's birthfather to provide proper care to the beneficiary, on March 7, 2007.

The petitioner responded to the field office director's fifth request for additional evidence on December 11, 2007, but she did not submit any of the requested evidence discussed above. Rather, her submission addressed an issue raised in the field office director's October 20, 2006 request for additional evidence that related to the capacity of the beneficiary's birthfather to provide proper care to the beneficiary.

The field office director denied the petition on June 23, 2008. The field office director noted that the petitioner had been requested, on multiple occasions, to submit an addendum to the home study which included a detailed discussion of the petitioner's husband's arrests, but that she failed to do so. The field office director also noted that the petitioner had been requested, on multiple occasions, to submit an addendum to the home study which indicated whether she and her husband's names had been searched in a child abuse registry, but that she failed to do so. Finally, the field office director noted that the petitioner had been requested, on multiple occasions, to submit a signed statement from her husband discussing each arrest, but that she failed to do so.

The petitioner, through counsel, filed a timely appeal. In her September 18, 2008 appellate brief, counsel contends that the field office director erred in denying the petition. Counsel states that failure of the petitioner's husband to disclose his criminal history is not material, and did not obstruct any inquiry by USCIS. She also states that the petitioner's husband's "failure to mention the arrests was not made to avoid discovery of facts adverse to his application," and that his "failure to mention the regrettable incidents arose from his own shame and embarrassment. With regard to the 1972 arrest for possession of marijuana, counsel notes that the arrest occurred more than thirty years ago, and asserts that it resulted from "a single instance of aberrant behavior."

Upon review of the entire record of proceeding, the AAO agrees with the field office director's decision to deny the petition. The AAO finds that five factors preclude approval of this petition: (1) the petitioner's failure to respond to submit requested evidence that precludes a material line of inquiry; (2) the petitioner's failure to submit a home study conforming to regulatory requirements; (3) the petitioner's failure to submit information regarding the final disposition of her husband's 1972 arrest; (4) the failure of the petitioner's husband to submit a signed statement regarding his criminal activity; and (5) the failure of the petitioner's husband to disclose his criminal history, and his history of substance abuse, to USCIS and the preparer of the home study. The AAO will address each of these factors separately.

The petitioner's failure to submit requested information

As discussed previously, the record lacks documentation that the field office director specifically requested on several occasions. The field office director requested an addendum to the home study that addressed whether the names of the petitioner and her husband had been checked in an available child abuse registry, as mandated by 8 C.F.R. § 204.3(e)(2)(iii)(A)(*1*), on two separate occasions: (1) on April 6, 2006; and (2) on June 5, 2007. The record still lacks such an addendum.

The field office director requested information regarding the final disposition of the petitioner's 1972 arrest on two separate occasions: (1) on April 27, 2006; and (2) on October 20, 2006. The record still lacks such evidence.

The field office director requested a signed statement from the petitioner's husband regarding his arrests on three separate occasions: (1) on April 27, 2006; (2) on October 20, 2006; and (3) on June 5, 2007. The record still lacks such evidence.

All of this information was material to the field office director's to determination as to whether the petitioner and her husband are able, as prospective adoptive parents, to provide proper care to the beneficiary, pursuant to section 101(b)(1)(F)(i) of the Act, 8 U.S.C. 1101(b)(1)(F)(i). Submission of this information is also required by the regulations, as set forth in detail at 8 C.F.R. § 204.3(e)(2). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Accordingly, the petition may not be approved.

The petitioner's failure to submit a home study conforming to regulatory requirements

The second factor precluding approval of this petition is the petitioner's failure to submit a home study conforming to regulatory requirements. The AAO's determination that the home study of record is deficient is based upon the failure of the preparer of the home study to include the following in the home study: (1) information regarding whether he or she had checked the names of the petitioner and her husband in an available child abuse registry; (2) information regarding the criminal activity of the petitioner's husband; (3) information regarding the petitioner's husband's history of substance abuse; and (4) a discussion of whether the petitioner's husband has rehabilitated.

As noted previously, the record still lacks, despite the field office director's ample notice to the petitioner that such was required, a home study that that addresses whether the names of the petitioner and her husband had been checked in an available child abuse registry, as mandated by 8 C.F.R. § 204.3(e)(2)(iii)(A)(*1*). For this reason, the home study does not conform to regulatory requirements.

As was also noted previously, the record still lacks, despite the field office director's ample notice to the petitioner that such was required, a home study that discusses the criminal activity and substance abuse of the petitioner's husband, as mandated by 8 C.F.R. §§ 204.3(e)(2)(iii)(B) and 204.3(e)(2)(v). Nor does the record contain a home study discussing the rehabilitation of the petitioner's husband, as mandated by 8 C.F.R. § 204.3(e)(2)(iii)(C). For these reasons as well, the home study does not conform to regulatory requirements.

On appeal, counsel fails to explain why the petitioner elected to ignore the field office director's multiple requests for a home study that conforms to regulatory requirements.

For all of these reasons, the home study of record does not conform to regulatory requirements, which precludes approval of this petition.

The petitioner's failure to submit documentation regarding the final disposition of her husband's 1972 arrest

The third factor precluding approval of this petition is the petitioner's failure to submit information regarding the final disposition of her husband's 1972 arrest. The AAO notes, preliminarily, that its discussion of the matter at this juncture relates solely to the presence, or lack of presence, of such evidence in the record of proceeding. The failure of the petitioner's husband to raise the issue of the 1972 arrest itself will be covered later.

As was noted previously, the field office director requested information regarding the final disposition of the petitioner's 1972 arrest on two separate occasions: (1) on April 27, 2006; and (2) on October 20, 2006. The petitioner failed to submit such information on both occasions and, on appeal, elects again not to submit such information.

The AAO acknowledges the Cameron County, Texas District Court's letter which states that the petitioner's husband had no felony indictment, and no felony conviction, between 1972 and the date the letter was issued in 2006. However, as was noted previously, that letter is deficient, as it does not specifically reference the petitioner's 1972 arrest. For example, if the crime for which he was arrested was not a felony, or if he entered into a plea agreement and was later charged with a misdemeanor, such subsequent history would not be shown in this letter. Nor does this letter indicate that documentation from his 1972 arrest is unavailable.

The regulation at 8 C.F.R. § 204.3(e)(2)(iii)(B) mandates that "[a] certified copy of the documentation showing the final disposition of each incident, which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action, must accompany the home study." Despite being afforded several opportunities to submit such documentation, the petitioner elected not to do so. On appeal, counsel offers no explanation as to why the petitioner has failed to submit this documentation. The petitioner's failure to submit such documentation regarding the final disposition of her husband's 1972 arrest precludes approval of this petition.

The failure of the petitioner's husband to submit a signed statement regarding his criminal activity

The fourth factor precluding approval of this petition is the failure of the petitioner to submit a signed statement from her husband regarding his criminal activity. As was the case with several of the other factors that preclude approval of this petition, the petitioner was afforded several

opportunities to correct this deficiency in the record. Again, the field office director requested a signed statement from the petitioner's husband regarding his arrests on three separate occasions: (1) on April 27, 2006; (2) on October 20, 2006; and (3) on June 5, 2007. The petitioner failed to submit such information on all three occasions and, on appeal, again elects not to submit such a statement.

The regulation at 8 C.F.R. § 204.3(e)(2)(iii)(B) mandates that "the prospective adoptive parent must submit a signed statement giving details including mitigating circumstances, if any, about each incident." Although counsel states on appeal that the petitioner's husband's "failure to mention the regrettable incidents arose from his own shame and embarrassment." With regard to the 1972 arrest for possession of marijuana, counsel notes that the arrest occurred more than thirty years ago, and asserts that it resulted from "a single instance of aberrant behavior."

In the absence of corroborating testimony from the petitioner's husband, the AAO does not accept the testimony of counsel regarding his 1972 arrest. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The failure of the petitioner's husband to submit a signed statement regarding his criminal activity precludes approval of this petition.

Failure to disclose

The fifth factor precluding approval of this petition is the failure of the petitioner's husband to disclose his criminal history, and his history of substance abuse.

The statutory and regulatory provisions discussed previously permit, but do not require, denial of a petition on the basis of a prospective adoptive parent's failure to disclose an arrest, conviction, or other adverse information. Whether to deny the application is a matter entrusted to USCIS discretion, and that determination is based upon protective concerns for the orphan. Therefore, complete knowledge of a petitioner's arrest and criminal history is clearly essential for a proper determination regarding whether the petitioner can provide proper care and a suitable home environment and to an adopted orphan. Accordingly, denial of a petition is often justified when a petitioner fails to make the required criminal history disclosures, unless it is clearly shown that the undisclosed information was immaterial to a discretionary determination regarding whether the applicant can provide proper care and a suitable home and to an orphan.

The record establishes that the petitioner and her husband have been placed on notice by the field office director on multiple occasions that she was aware of the criminal history of the petitioner's husband. The field office director requested information regarding the final disposition of the petitioner's 1972 arrest on two separate occasions. The petitioner has still failed to submit such evidence. The field office director requested a signed statement from the petitioner's husband

regarding his arrests on three separate occasions. Again, the petitioner has still failed to submit such evidence.

Although counsel states on appeal that the petitioner's husband failed to disclose his criminal history due to his "shame and embarrassment," the AAO notes that he has repeatedly failed to cooperate with USCIS by submitting the requested evidence. Shame and embarrassment do not excuse the petitioner's husband from complying with the regulatory requirements at issue in this case.

The AAO notes further that, at the time the petitioner's husband told the preparer that he had never been arrested, the assault charge had still not been resolved: as noted previously, the record indicates that that charge was not dismissed until March 23, 2006, more than two months after the home study was prepared. The petitioner, therefore, failed to disclose a criminal case against him that was still ongoing.

Upon thorough review of the record, the AAO finds that the petitioner's husband failed to disclose serious material criminal history information to the home study preparer and to USCIS. Given the nature and seriousness of the crimes, and the fact that counsel acknowledges such failure of disclosure was not accidental, but rather to his shame and embarrassment, the AAO finds such failure of disclosure to mandate denial of this petition.

Conclusion

In accordance with the preceding discussion, the AAO finds that five factors preclude approval of this petition: (1) the petitioner's failure to submit requested evidence that precludes a material line of inquiry; (2) the petitioner's failure to submit a home study conforming to regulatory requirements; (3) the petitioner's failure to submit information regarding the final disposition of her husband's 1972 arrest; (4) the failure of the petitioner to submit a signed statement from her husband regarding his criminal activity; and (5) the failure of the petitioner's husband to disclose his criminal history, and his history of substance abuse, to USCIS and the preparer of the home study. For all of these reasons, the AAO will not disturb the director's denial of the petition.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.

ORDER: The appeal is dismissed.