

Burden of Proof in Visa Proceedings

BURDEN OF PROOF FOR A VISA

A. Burden of Proof

The burden of proof to establish eligibility for an immigration benefit always falls solely on the benefit requestor.^[1] The burden of proof never shifts to USCIS.

Once a benefit requestor has met his or her initial burden of proof, he or she has made a *prima facie* case. This means that the benefit requestor has come forward with the facts and evidence which show that, at a minimum, and without any further inquiry, he or she has proven initial eligibility for the benefit sought, though in certain cases the officer is then required to determine whether approval or denial is appropriate, in his or her discretion.

B. Standards of Proof

The standard of proof is different than the burden of proof. The standard of proof is the amount of evidence needed to establish eligibility for the benefit sought. The standard of proof applied in most administrative immigration proceedings is the preponderance of the evidence standard. Therefore, even if there is some doubt, if the benefit requestor submits relevant, probative, and credible evidence that leads an officer to believe that the claim is “probably true” or “more likely than not,” then the benefit requestor has satisfied the standard of proof.[\[2\]](#)

If the requestor has not met this standard, it is appropriate for the officer to either request additional evidence or issue a notice of intent to deny, or deny the case.[\[3\]](#)

The preponderance of the evidence standard of proof does not apply to those applications and petitions where a different standard is specified by law. The Immigration and Nationality Act (INA) provides for a higher standard in some cases, such as the clear and convincing evidence standard that is required when a beneficiary enters into a marriage while in exclusion, deportation, or removal proceedings, and to determine the citizenship of children born out of wedlock.[\[4\]](#)

PREPONDERANCE OF EVIDENCE

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought. *See, e.g., Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997) (noting that the petitioner must prove eligibility by a preponderance of evidence in visa petition proceedings); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965) (finding that the petitioner had not established eligibility by a preponderance of the evidence because the submitted evidence was not credible); cf. *Matter of Patel*, 19 I&N Dec. 774, 782-3 (BIA 1988) (noting that section 204(a)(2)(A) of the Act, 8 U.S.C. § 1154(a)(2)(A) (Supp. IV 1986), requires a higher standard of clear and convincing evidence to rebut the presumption of a fraudulent prior marriage).

Matter of Chawathe, 25 I&N Dec. 369 (AAO 2010)

(3) In most administrative immigration proceedings, the applicant must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

More info regarding *Matter of Chawathe* is available on the [Asylee Adjustment](#) page.

[Full decision here.](#)

Matter of Martinez, 11 I&N Dec. 151, 152 (BIA 1965)

**Matter of Soo Hoo, 11 I&N Dec.
151, 152 (BIA 1965)**

**Matter of Patel, 19 I&N Dec. 774,
782-3 (BIA 1988)**

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The burden of proof never shifts to USCIS.

STANDARD OF PROOF

The standard of proof is the amount of evidence needed to establish eligibility for the benefit sought. The standard of proof applied in most administrative immigration proceedings is the preponderance of the evidence standard.

BURDEN V. STANDARD

The standard of proof is different than the burden of proof. The standard of proof is the amount of evidence needed to establish eligibility for the benefit sought. The burden of proof is WHO has to meet the standard of proof.

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