



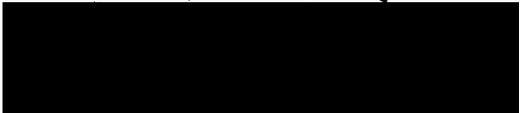
B2

U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC 00 052-51951

Office: California Service Center

Date: 12 MAR 2002

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in education. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on December 13, 1999, seeks to classify the petitioner as an alien with extraordinary ability as a historian. The petitioner possesses a Ph.D. in Historical Sciences from Belgrade University and serves as an associate professor at the Institute for Modern Serbian History. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish sustained

acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The petitioner submits evidence of at least ten articles and a book chapter which have mentioned him since 1989. The articles appearing in the *Telegraf Weekly*, the *Weekly Borba*, *Nedeljni Telegraf*, *Bojcka*, *Politika*, *NIN*, and Historiography and Critics were all submitted with incomplete translations or no translations at all. By regulation, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). Unattested summary translations of various articles cannot suffice to satisfy this criterion. Without complete translations, it cannot be determined that the petitioner is the main subject of the articles, or that he was featured because of his achievements as an extraordinary historian.

Additionally, the regulation repeatedly stresses that the petitioner should be the subject of coverage in "major" publications and media. Because the statute demands national or international acclaim, the petitioner cannot satisfy this criterion unless he has been the subject of coverage in major national or international publications. Local newspapers and regional magazines with limited circulation do not constitute major media in this regard. The petitioner has omitted evidence regarding the significance of these publications or the extent of their circulation. Finally, several of the articles submitted by the petitioner do not include the name of the author, as required by the regulation. The evidence submitted thus fails to satisfy this criterion.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

Counsel states that the petitioner has met this criterion through book critiques and participation in various interviews. The petitioner submits an article appearing in the *Telegraf Weekly* in 1998 offering a brief evaluation of a book on Kosovo's history by the petitioner and three other critics, an article appearing in the *Nedeljni Telegraf* in 1999 reflecting an interview of the petitioner about Serbia's experiences in the 20<sup>th</sup> Century, an article appearing in the *Weekly Borba* in 1990 reflecting an interview of the petitioner about the changing political system in Yugoslavia, and an article appearing in the *Weekly Borba* in 1989 reflecting an interview of the petitioner in which he essentially offers a brief summary of another's book about the Serbian Army.

The brief book critiques offered by the petitioner are insufficient to satisfy this criterion. The petitioner has failed to demonstrate that his limited participation in two book critiques carries sufficient weight to reflect achievement at the top of his field.

The articles reflecting interviews of the petitioner regarding Serbia and Yugoslavia do not constitute evidence of the petitioner's participation "as a judge of the work of others." These published interviews of the petitioner are more relevant to "published materials about the alien" and have already been addressed under the previous criterion.

On appeal, the petitioner states that he served on a doctoral dissertation panel, participated in a promotion credential evaluation panel for [REDACTED] co-supervised a Ph.D. candidate, and evaluated book manuscripts for various publishers. The documents submitted by the petitioner to support this claim were not accompanied by complete certified English language translations as required by 8 C.F.R. 103.2(b)(3). Additionally, the supervision of doctoral candidates does not necessarily equate to judging individuals in one's field of specification. Doctoral candidacy is not a field of endeavor, but, rather, training for future employment in one's field of endeavor. The petitioner's claim that he has judged doctoral candidates does not carry the same evidentiary weight as judging accomplished historians. It should also be noted that two of the documents submitted on appeal were dated 5/18/2000 and 8/12/2000. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998).

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

John Lampe, Chair of the History Department at the University of Maryland, states:

Over the past twelve years, his six books and numerous articles have established him as literally the world's leading expert on Yugoslavia's military history, from the founding of the first Yugoslavia in 1918 through the Communist regime and into the wars of dissolution in the early 1990s. These publications place his contribution, in my opinion, ahead of those provided by Professor Robin Remington of the University of Missouri during the 1970s and the U.K. defense analyst James Gow during the late 1980s. I should add that [the petitioner's] work meets the highest standards of scholarly documentation and is free of either the Titoist or nationalist bias that, Western authors included, plagues so much of the publication on this sensitive subject. It should also be noted that no Western scholar has been allowed access during the long Milosevic regime to the primary sources on history of Yugoslavia's army that he has been able to consult.

Turning to [the petitioner's ] capacity to teach and write in English, I make the following points. He has participated in ongoing workshops in Hungary and England on addressing the history of Southeastern Europe in an appropriately comparative, and non-nationalist perspective. He has also lectured in England and worked with the graduate students of several U.S. colleagues. At a time when few American scholars are being trained at the doctoral level in Balkan history in general and Yugoslavia's history in particular, [the petitioner] provides expertise that makes him a most viable candidate for a variety of teaching positions. He is contributing a chapter on the military to a forthcoming volume on Yugoslavism. 1918-1991: The History of a Failed Idea for Hurst & Co. I happen to know this because I am contributing the chapter on economics. My appreciation of his capacity extends to my recent response to an invitation from the U.S. publisher Scholarly Resources to write a history of "Yugoslavia in World War II" for their new series on the world war. On learning that [the petitioner] might be coming to the U.S., I changed my decision to refuse this offer to an acceptance if he would be accepted as the primary author. He has since agreed to do so, and the series editor has now informed me that he gladly accepts [the petitioner] as my co-author.

Lenard Cohen, Professor, Department of Political Science, Simon Fraser University, offers two letters of support. He states:

[The petitioner] is one of Yugoslavia's brightest young historians. His record of publication on military elites in communist and pre-communist Yugoslavia, as well as other articles on the history of his country and numerous review articles, already constitute an impressive body of work... [The petitioner] reveals a keen understanding of the important historical debates and controversies regarding Yugoslav and Balkan history. At the same time, he carefully examines the detailed evidence to support his case, avoiding polemical and emotional judgements that serve a particular partisan cause. I believe he is one of the most gifted and promising younger middle-generation scholars currently on the Yugoslav scene, and that he should be given every opportunity to further mature as a scholar.

\* \* \*

The petitioner expresses himself well in English and would be a wonderful asset to any North American University or institute where other scholars would be able to benefit from his keen understanding of the Balkan Peninsula. On a personal note, [the petitioner] is a very congenial individual, who, while a serious scholar, enjoys the give and take of discussion and debate with colleagues. I have absolutely no hesitation in recommending him to you as an excellent choice for research support.

\* \* \*

[The petitioner] is one of Serbia's most prominent historical scholars. I have known him for several years, and have been reading his articles, books, and letters to various journals even before I made his personal acquaintance some years ago. [The petitioner] is

extremely well trained, exceptionally balanced in his viewpoints, and a meticulous researcher who only puts pen to paper after a serious analysis of the subject he is analyzing. His many invitations to international conferences and scholarly colloquiums indicate the very high repute in which he is held by the international community of historians and political analysts. It is only owing to the recent repressive environment in Yugoslavia, and the limited opportunities for expression and career mobility, that would lead a young middle-aged scholar, such as [the petitioner], to leave his native country and seek an opportunity to continue his career in the United States. I am confident that if you decide to give him that opportunity, he will successfully obtain employment and become a prolific contributor to his field in the United States.

Aleksandar Pavkovic, Associate Professor, Department of Politics, Macquarie University, offers two letters of support. He states:

In the course of the preparation of the collection, I first met the [petitioner]... [The petitioner] produced for our collection, on a very short notice, an essay on the life and work of the first Karadjordjevic king of Serbia, King Peter I. Among the other seven essays to be published in this collection, his essay stood out in its precision, economy of style and informative content; it was, in short, a piece of scholarly writing *par excellence*.

\* \* \*

Having become more widely acquainted with [the petitioner's] work, I recommended to the Serbian Studies Foundation of Macquarie University to invite him as the keynote speaker at an international conference that the foundation organized in 1996. The topic of the conference was the life and work of Yugoslav resistance leader Dragoljub Mihailovic. For the conference, [the petitioner] wrote a highly original paper which gave a synoptic overview of the recent scholarly work in Yugoslavia and abroad on the subject of the Yugoslav World War II resistance.

\* \* \*

Even before his visit to Macquarie University and Australia, [the petitioner] and I started to collaborate on several projects in contemporary Yugoslav history. After his visit, this collaboration widened to include supervision and guidance of postgraduate students. Thus, [the petitioner] was helpful in guiding our doctoral students visiting Belgrade archival and academic institutions.

\* \* \*

As a result of the collaboration, I was able to follow very closely [the petitioner's] historical research and publications. As he is one of the most productive Yugoslav scholars, his publications already form a small library. This was certainly not achieved

at the expense of quality. All of his publications show the same consistent high quality and innovative approach that his early monographs had already shown.

John Treadway, Professor of History at the University of Richmond, also offers two letters of support. He states:

I have known [the petitioner] for almost a decade. We met for the first time when I was a visiting Fulbright Research Professor at the University of Belgrade in 1990, shortly before the dissolution of Communist Yugoslavia and the onset of years of horrible warfare. Since our first encounter in Belgrade in 1990, I have followed his career with great interest, and I *welcome* this opportunity to write on his behalf.

From the moment we first met, I could tell that [the petitioner] was quite different from the rabid nationalist intellectuals I encountered all too frequently in the lecture halls and cafes of Zagreb and Belgrade on the eve of Yugoslavia's bloody unraveling. [The petitioner] was a moderate young man who, despite (or because of) his interest in military history, abhorred the prospect of war. A person who had lived and worked in different parts of Yugoslavia, he was tolerant of other nationalities, religions, and traditions- an exponent of a peaceful resolution to Yugoslavia's ethnic troubles. The holder of an undergraduate degree in Political Science from the University of Zagreb, he had just finished his MA/MS at the University of Belgrade and was completing work on his Ph.D. in history (dissertation topic: Yugoslav military during the reign of King Alexander I) under the tutelage of some of the most respected and open-minded members of that institution's history department. Since taking his Ph.D. in 1992, he has been employed, during what we all know to be difficult times, as a research professor at the Institute for Modern Serbian History.

[The petitioner], a scholar who is as productive as he is personable, has already written six books- not to mention some fifty scholarly articles- on a wide range of topics relating to Yugoslav history in the twentieth century. He has made his reputation as a specialist on the Yugoslav military (his first major publication, an examination of the Yugoslavia army between 1918 and 1921, relates to his dissertation research; his most recent book investigates the multinational aspects of the Yugoslav armies between 1918 and 1991), but it would be a mistake to label him as simply a conventional "military historian." [The petitioner] has consistently investigated military topics within the broader context of social history.

If awarded a research fellowship, [the petitioner] would like to investigate "The Challenges of Post-War Reconciliation: Historical and Comparative Approaches." Needless to say, this particular topic is not some idle academic exercise. It is of immediate relevance for [the petitioner's] fractured homeland, as academics, politicians, and ordinary folk living in the six republics of the former Yugoslavia attempt to overcome the animosities of the past and fashion a new, meaningful political, social, and economic order. As he has undoubtedly mentioned in his letter of application, [the petitioner] has already been involved in a special project aimed at

regional reconciliation, the "Dialogue among Historians," which has brought together academics from all parts of the former Yugoslavia as well as scholars from Western and Central Europe.

[The petitioner] is moderately fluent in English and will have no difficulty adjusting to life in the United States. (He has already conducted research in Great Britain and Australia, not to mention France, Switzerland, and Italy.) His current project requires extensive work in the Library of Congress and at various academic institutions, including research institutes, in the greater Washington area, and elsewhere in the United States.

In short, [the petitioner] is an extraordinarily talented young man of great accomplishment who has the requisite academic credentials, linguistic preparation, breadth of vision, moral probity, and genuine personal and intellectual tolerance. I recommend him to you with every confidence in his ability to make a positive contribution not only to the scholarly life of this country, but also to that of his troubled homeland. To my way of thinking, he is precisely the kind of young scholar from Yugoslavia we should want to encourage.

██████████ Professor Emeritus at the University of California at Santa Barbara, also offers two letters of support for the petitioner. Professor Djordjevic indicates that he wrote the preface for a book co-authored by the petitioner. He describes the petitioner as "well known among scholars in the United States and Europe who deal with the modern history of Yugoslavia, Serbia and the Balkans." Professor ██████████ of the Institute for Modern Serbian History states that he has known the petitioner for eighteen years and had previously served as his Ph.D. advisor. He describes the petitioner as an unbiased researcher and devoted colleague. Professor Stankovic credits the petitioner with writing about two hundred articles regarding Yugoslavian civil-military relations. He also describes the petitioner's assistance to visiting foreign students and participation in various conferences. ██████████ Director of the International Association for the Exchange Students for Technical Expertise in Belgrade, also describes the petitioner's activities with visiting foreign students. He states that the petitioner has organized sight-seeing tours, lectures, and visits to various cultural performances in Belgrade. Dragan Vukicevic further states that he has known the petitioner for almost a decade and describes him as "a welcomed lecturer and amusing companion."

On appeal, the petitioner cites a section of a book written by the late Professor Branko Petranovic, Chair of the History Department at Belgrade University (the institution where the petitioner obtained his master's degree and doctorate). The uncertified translation states: "[The petitioner], who answered on most of the questions he had posed, does not only contribute to our knowledge by new evidence, furthermore he has established a new field in Yugoslav historiography."

The classification sought by the petitioner requires him to establish that he has attained national or international acclaim for his contributions of major significance to the field. All seven of the individuals offering letters of support for the petitioner are his fellow colleagues or personal acquaintances. These letters from his research collaborators, academic advisor, university colleagues, and two professors who have invited him to lecture at their universities

and provide guidance to their students fail to establish the petitioner's national or international notoriety as a historian. If the petitioner's work is not widely praised outside of his professional acquaintances and university, then it cannot be concluded that he enjoys sustained national or international acclaim as one who has reached the very top of his field.

The construction of the regulations demonstrates the Service's preference for verifiable, documentary evidence, rather than subjective opinions of witnesses selected by the petitioner. It should be noted that the Service is not questioning the credibility of the petitioner's witnesses, but looking for evidence that the petitioner's research has impacted the field beyond his acquaintances.

Several of the individuals offering letters of support mention the petitioner's authorship of six books and numerous articles on Yugoslavia's military history. While the petitioner's historical research clearly has practical applications, it can be argued that any Ph.D. thesis or article, in order to be accepted by a university or for publication, must offer new and useful information to the pool of knowledge. It does not follow that every researcher whose scholarly research is accepted for publication or as a dissertation has made a major contribution in their field.

The petitioner has not provided sufficient evidence that his research, to date, has consistently attracted significant attention from prominent authors and historians. Several of the testimonial letters, such as the one from Professor [REDACTED] speculate on the future promise of the petitioner's research. Professor Treadway offers support for the petitioner's research fellowship application and describes the petitioner as having the "ability to make a positive contribution." Professor Lenard Cohen describes the petitioner as "an excellent choice for research support." He further states: "I believe [the petitioner] is one of the most gifted and promising younger middle-generation scholars currently on the Yugoslav scene, and that he should be given every opportunity to further mature as a scholar." These descriptions support the director's conclusion that the petitioner has not yet risen to the top of his field.

The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals "progressing toward the top" at some unspecified future time. We cannot ignore that many of the petitioner's witnesses appear to have earned considerably more prestige and authority than the petitioner in the historical research community; they hold higher degrees, have won awards for their work, and published more books and articles. While the witness letters from the petitioner's colleagues and collaborators are useful in detailing the petitioner's research studies and academic achievements, they offer insufficient evidence to demonstrate his lasting or wide-ranging impact as a historian which is critical to a demonstration of sustained national or international acclaim.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submitted evidence that he has authored or co-authored numerous articles and at least six books on Yugoslavia's military history. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31,

1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment."

Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's conclusions. Frequent citation by independent researchers, on the other hand, demonstrates more widespread interest in, and reliance on, the petitioner's work.

On appeal, the petitioner states that his published work has been recognized in a book chapter written by Professor [REDACTED] and an article written by Professor [REDACTED]. It should again be noted that Professor [REDACTED] chaired the history department at the petitioner's university. The petitioner has failed to provide a citation history of his published works to support the claim that his writings have earned him a national or international reputation as a historian. The record contains little or no evidence the petitioner's articles have been heavily cited by independent historical researchers.

Further, the plain wording of the regulation requires authorship of scholarly articles "in professional or major trade publications or other major media." The petitioner has not submitted sufficient documentation establishing the significance of the publications presenting his work or the extent of their circulation. Thus, it has not been proven that they qualify as "major media." In sum, the petitioner has failed to demonstrate that his published works have earned him, individually, national or international acclaim.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

Counsel states that the petitioner has presented the results of his research and opinions at several international conferences. The plain wording of the regulation refers to "artistic exhibitions or showcases," which does not apply to conferences and scholarly colloquiums where researchers present their findings or opinions. On appeal, the petitioner states that his books are available at various libraries and universities throughout the world. The petitioner's published works have already been addressed under the previous criterion. This criterion is clearly intended for artists such as sculptors and painters rather than for scholarly researchers. Not every criterion will apply to every occupation. Further, there is no mention as to whether the petitioner served as a keynote speaker, or if he was simply one of many historical researchers giving presentations at the same forum. The listing of conferences attended by the petitioner fails to demonstrate sustained national or international acclaim in his field of endeavor.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

Initially, the petitioner did not claim eligibility under this criterion. On appeal, the petitioner states that he is one of the nine founders of the Association for Social History (Belgrade); serves on the editorial board for the *Annual of Social History*; serves as the editor-in-chief of *Currents of History* (a journal of essays published by the Institute for Modern Serbian History); and "participated as an expert on civil-military relations" for the New Serbia Forum. The petitioner submits evidence of his participation in these groups. The petitioner states that these groups have "received excellent recognition in Europe, North America and Australia." However, he offers no evidence to support this claim other than an incomplete, uncertified translation of a commentary written by Professor Wolfgang Hoepken of Germany discussing articles appearing in the *Annual of Social History* and *Currents of History*. Professor Wolfgang Hoepken's commentary does not appear to even mention the petitioner or his role as an editor. The petitioner has not submitted sufficient evidence to demonstrate that the above mentioned groups and publications qualify as organizations or establishments with distinguished reputations. It should be noted that there are numerous prestigious research institutions and scholarly publications throughout the world, each with several important research groups and most, not all, of these groups have at least one valuable researcher. The record does not contain sufficient evidence documenting the petitioner's "leading or critical role" within his organizations.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

As noted by the director, the petitioner has demonstrated an impressive career as a historian, author and scholar. Review of the record, however, does not establish that the petitioner has distinguished himself as a historian to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a historian, but is not persuasive that the petitioner's achievements set him significantly above others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.