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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: [redacted] Office: Nebraska Service Center Date: 16 SEP 2002

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Nebraska 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 the sciences. 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 he has sustained national or international acclaim at the very top level.

This petition, filed on December 1, 2000, seeks to classify the petitioner as an alien with extraordinary ability as a scientific researcher. The petitioner came to the United States (under J-1 visa status) to conduct post-doctoral research at the University of Texas Southwestern Medical Center from 1995 to 1998. From 1998 through the petition's filing, the petitioner has worked as a postdoctoral research associate at the Wayne State University School of Medicine. The petitioner's field of expertise is biomedical research.

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 that, he claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Counsel for the petitioner indicates that the petitioner has received the following awards:

1. Certificate [redacted] from the People's Liberation Army of China stating that the petitioner received second prize "for advanced scientific and technological research" (1989)
2. Certificate [redacted] from the People's Liberation Army of China stating that the petitioner received second prize "for advanced scientific and technological research" (1993)
3. Certificate [redacted] from the Chongqing Association of Science and Technology for "Excellent Academic Paper" in scientific research (1992)
4. Certificate from the State Association of Biochemistry for "Excellent Academic Paper" in scientific research (1991)
5. Certificate [redacted] for "Excellent Academic Paper" in scientific research (1997)

By regulation, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which 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). At the time of filing, the petitioner submitted copies of the above certificates; however, they were not accompanied by complete, certified translations. Without proper translations and documentation establishing the national significance of these awards, the petitioner has not shown that the awards earned him national acclaim in China. Awards that are institutional or provincial in scope cannot satisfy this criterion.

Several awards received by the petitioner appear to be academic in nature. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. Awards based on academic achievement do not constitute nationally recognized "awards for excellence in the field of endeavor." A student award may place the petitioner among the top students at his particular university, but it offers no meaningful comparison between the petitioner and the most experienced and practiced researchers in the field.

In response to the director's request for evidence, the petitioner submitted a letter reflecting that he applied for a "2001 Louis N. and Arnold M. Katz Basic Science Research Prize for Young Investigators." The petitioner submitted no evidence confirming that he eventually won the competition. Information provided by the petitioner from the American Heart Association's web

site states that this award is for "new investigators" with "the potential to become an original contributor to the field." The petitioner's application for this award reflects that, by his own admission, the petitioner has not yet reached the very top of his field.

On appeal, the petitioner provides certified translations of only the first two award certificates listed above. The record contains no documentation from the awarding entity indicating the national importance of the awards or the criteria used for selecting recipients. In his witness letter, Professor [redacted] refers to the award from the People's Liberation Army of China as a "grant."

The petitioner submits evidence that he received grants from the National Nature Science Foundation of China, the Welch Foundation, and the American Heart Association. The petitioner's funding grants do not constitute nationally recognized "awards for excellence." Research grants are common in biomedical research and generally support future research rather than recognize prior achievement. The Welch Foundation lists Professor William Garrard as the grantee's principal investigator; the petitioner's name does not even appear on the grant. The petitioner has submitted information from the American Heart Association's web site stating: "The funding mechanisms offered are designed to assist beginning investigators in developing research careers..." Therefore, it cannot be argued that the receipt of such funding automatically places the petitioner at the pinnacle of his field.

Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The petitioner must provide sufficient evidence to establish that his awards enjoy significant national or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this very restrictive criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner submits a letter, dated April 12, 1999, welcoming him as a member of the Scientific Council of American Heart Association for Arteriosclerosis, Thrombosis and Vascular Biology.

The petitioner must show that this association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, memberships in an association that judges membership applications at the local chapter level do not qualify. It is clear from the regulatory language that members must be selected at the national or international level, rather than the local level. Finally, the overall prestige of a given association cannot satisfy the criterion, because the key issue is membership

requirements rather than the association's overall reputation.

According to information provided from the American Heart Association's web site, one can become a member of the Scientific Council of American Heart Association for Arteriosclerosis, Thrombosis and Vascular Biology simply by registering online and paying a $45 membership fee. The petitioner has failed to submit evidence showing that membership within this organization requires outstanding achievement as judged by national or international experts in the biomedical research field.

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 satisfies this criterion. However, a review of the record reveals no evidence to support counsel's claim. The petitioner has offered no direct evidence, such as letters originating from Third Military Medical University, to confirm that he judged the work of doctoral students. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Even if the petitioner were to submit evidence reflecting that he judged students while serving as an associate professor, such evidence would be insufficient to satisfy this criterion. In an occupation where "judging" the work of others is an inherent duty of the occupation, such as an instructor, teacher (including graduate student teaching assistants), professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim.[1] Instead, a petitioner must demonstrate that the alien's sustained national or international acclaim resulted in his selection to serve as a judge of the work of others in his field. Similarly, the judging must be on a national or international level and involve other accomplished professionals in the research field. For example, judging the work of tenured research professors carries greater weight than judging doctoral students at a local university.

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

The petitioner submits several witness letters attesting to his research contributions. In his first letter, [redacted] Assistant Professor in Medicine, Wayne State University, states:

In September of 1998, I was fortunate to recruit [the petitioner] to work in my laboratory as a research associate. His project was to understand the molecular mechanisms of a transcription factor SRF-mediated regulatory network that controls the expression of

[1] This is true with all duties inherent to an occupation. For example, publication is inherent to researchers. Thus, the mere publication of scholarly articles cannot demonstrate national acclaim. The petitioner must demonstrate that the articles have garnered national attention, for example, by being widely cited.

smooth muscle-specific genes in arterial vasculature. Congenital and acquired vascular diseases affect a large portion of the population, including infants, children and adults. It accounts for the most common cause of death in the United States, including a large variety of disorders in different aspects of smooth muscle biology.

Although tremendous advances have been achieved towards the diagnosis and treatment of human vascular diseases, new approaches must be developed for effective prevention and treatment. Recent molecular genetic studies have identified vascular defects at the molecular level. Understanding the molecular basis of smooth muscle myogenesis will advance our knowledge of the pathogenesis of human vascular diseases. Because of the significance of the research, it is funded by National Health Institute. The project [the petitioner] is working on is the core of the grant.

After about two years of hard work in my laboratory, his talent as a research scientist stands out. During this period of time, we have generated exciting results that will be presented in an annual meeting of The American Heart Association at New Orleans. These studies also provide strong preliminary data to support my grant proposal on the genetic control of cardiovascular diseases to the American Heart Institute. The achievements so far would not have happened if [the petitioner] had not been working in my laboratory.

One of the major lab contributions of [the petitioner] is extending his expertise of chromatin immunoprecipitation (CHIP) technologies in yeast to mammalian vascular smooth muscle cells. This application allows us to examine the regulation of gene expression at [the] chromatin level, which is closer to the situation in a living cell. This is of special importance to understand the pathogenesis of human cardiovascular diseases.

[redacted] in his second letter, states that the petitioner's work in his laboratory has "laid a solid foundation" for advances in smooth muscle regulation. He adds: "[The petitioner] presented his new finding indicating that the regulation of the smooth muscle gene is through [the] cromatin structure." [redacted] notes that this finding has "potential implication in the clinical treatment of cardiovascular disease."

[redacted] Professor of Molecular Biology, University of Texas Southwestern Medical Center, supervised the petitioner's postdoctoral research from 1995 to 1998. Professor Garrard states: "The petitioner displayed a level of maturity far beyond that expected of postdoctoral fellows, but, rather, equivalent to that of an advanced investigator." The classification sought by the petitioner requires him to demonstrate achievement at the very top of the biomedical research field, not merely equivalence to that of an "advanced investigator." Professor Garrard credits the petitioner with being "a key professional" in his laboratory in directing an NIH-funded project. Professor Garrard describes the petitioner's research that was published in *Genomics*:

[The petitioner's] work included wet lab experimentation technology along with software development for the analysis of genome sequences. These studies have significance in the

analysis of polymorphisms between individuals which can be used to track gene traits genetically.

In his second letter, Professor [redacted] states: "The petitioner addressed for the first time in his field of research the role of chromatin structure on regulated gene expression in smooth muscle cells." He adds: "[The petitioner's] work is important to the field of cardiovascular biology because his work reveals a mechanism for the chemical modification and reorganization of chromatin involved in the transcriptional regulation of genes responsible for smooth muscle differentiation." Professor Garrard notes that these genes are important for specifying the cellular processes that promote the formulation of blood vessels and prevention of atherosclerosis lesions and hypertension.

Professor [redacted] Chief, Division of Cardiology, Wayne State University, credits the petitioner with adding to the understanding of the mechanism by which radiation damages DNA, the heat shock response, and the signals that interact with human DNA.

Professor [redacted] Shanghai Institute of Cell Biology, supervised the petitioner's Ph.D. program. Professor [redacted] credits the petitioner with breakthrough research concerning dose-dependent radiation damage and age-dependent radiation sensitivity in the process of brain injury (in an animal) with acute radiation syndrome. Professor [redacted] states that these findings "provided a potential use as a biochemical indicator to predict the progress and extent of radiation injury in brain neurons." He states that the petitioner's findings also provided new evidence that the chromatin in neurons in young individuals showed a higher sensitivity to radiation injury than those in adult individuals. Professor [redacted] states that the petitioner also conducted research that "added new insight" to the pool of scientific knowledge concerning the molecular mechanism during brain aging.

[redacted] Principal Investigator at the Shanghai Institute of Cell Biology from 1984 to 1994, headed research aimed at understanding the role of the structure of the genome. [redacted] refers to the petitioner as being a "top student" at the institute and describes the petitioner's role within his laboratory. Dr [redacted] details the petitioner's use of Ethidium Bromide to treat nuclei and study the consequence of such a treatment on the human genome.

Professor [redacted] Louisiana State University Medical Center, collaborated with the petitioner in investigating the molecular basis of the heat shock response, the principal means by which living organisms endure diverse physiological stresses. Professor [redacted] credits the petitioner with creating a useful laboratory tool for genome comparison in the form of a two-dimensional DNA display. He also credits the petitioner with "developing a new protocol based on advanced chromatin immunoprecipitation technology" to confirm the enrichment of the flanking sequence in known heat shock genes.

Several of the individuals offering letters of support, including Dr. [redacted] Professor [redacted] Dr. [redacted] and Professor [redacted] mention the petitioner's published and presented research. The record contains no evidence that the presentation or publication of one's work is a rarity in

biomedical research, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's work in their research. The publication of one's findings is an inherent duty of post-doctoral researchers. Thus, the mere publication of scholarly articles cannot demonstrate a contribution of major significance in the biomedical research field. While the petitioner's research clearly has practical applications, it can be argued that any article, in order to be accepted in a scientific journal for publication, must offer new and useful information to the pool of knowledge. It does not follow that every scientist whose scholarly research is accepted for publication has made a major contribution to his field. The petitioner must demonstrate that his articles and presentations have garnered national or international attention from throughout the scientific research community. We will further address the petitioner's published works under a separate criterion.

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. The majority of the individuals offering letters of support are his supervisors and collaborators from University of Texas Southwestern Medical Center, Wayne State University School of Medicine, and Shanghai Institute of Cell Biology. Other individuals, who have collaborated with the petitioner or who are familiar with Dr. [redacted] work, have also lent their support. These letters fail to establish the petitioner's national or international notoriety as a biomedical researcher. If the petitioner's work is not widely praised outside of his professional acquaintances and research institutions, then it cannot be concluded that he enjoys sustained national or international acclaim as one who has reached the very top of his field.

Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Furthermore, 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 scientific community beyond his research institutions. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

While the petitioner is credited with making "seminal discoveries" in genetic research, the fact that the petitioner was among the first to make such discoveries carries little weight. Of far greater importance in this proceeding is the importance to the field of the petitioner's discoveries. The petitioner has not provided sufficient evidence that his research, to date, has consistently attracted significant attention from independent biomedical researchers. The petitioner must show not only that his discoveries are important to his own research institutions, but throughout the biomedical research field.

Several of the testimonial letters, such as the one from Dr [redacted] Senior Investigator with the National Institutes of Health, speculate on the future promise of petitioner's research. Dr. [redacted] states: "I believe that [the petitioner] will be an asset to the biomedical research

community of the United States and expect that he will make significant contributions toward the medical progress of this country." The witnesses' use of phrases such as "will have a significant impact" and "will greatly benefit the research" in describing the petitioner's efforts seem to suggest future results rather than a past history of major achievement. These descriptions support the director's conclusion that the petitioner has not yet risen to the top of the biomedical research field. While Dr. [redacted] credits the petitioner with having unique expertise in chromatin studies, the overall tone of his two letters suggests that the petitioner, while an effective team player, is not yet widely recognized for major contributions in the biomedical research field. We note that the issue in this case is not the undoubted importance of the research conducted at Dr. [redacted] laboratory, but, rather, the specific contributions of the petitioner that would demonstrate his national or international acclaim.

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, such as Professors [redacted] and [redacted] appear to have earned considerably more prestige and authority in the scientific community. While the witness letters from the petitioner's colleagues are useful in detailing the petitioner's biomedical research studies, they fail to demonstrate his lasting or wide-ranging impact as a biomedical researcher that 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 several biomedical research articles. 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," rather than a mark of distinction, among postdoctoral researchers. This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles. 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 would demonstrate more widespread interest in, and reliance on, the petitioner's work.

The petitioner submits what he alleges to be three citations appearing in Chinese scientific

journals. However, the articles alleged to cite the petitioner's work were not accompanied by certified translations. Even if we were to accept the articles without proper translations, a mere three citations of the petitioner's work simply does not rise to a level that would demonstrate sustained national or international recognition in the scientific community. As the publication of one's findings is an inherent duty of doctoral candidates and post-doctoral researchers, the petitioner has failed to distinguish his articles as superior to those of other competent researchers. We further note that although the petitioner has been working in the United States since 1995, he offers no evidence that any of his articles have been cited in major scientific journals published outside of China. In sum, the petitioner has failed to demonstrate that his published works have earned him, individually, sustained national or international acclaim.

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

In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization as a whole.

Counsel states that the petitioner has performed a leading or critical role at the Third Military Medical University, the Shanghai Institute of Cell Biology, the University of Texas Southwestern Medical Center, and Wayne State University. We cannot ignore that the petitioner's role at these institutions was either that of a student or of a post-doctoral researcher. Such roles represent temporary training for a future professional career in one's field.

On appeal, the petitioner argues that the director erred by arbitrarily placing the standard for evaluating his leading or critical role at the position level. The petitioner states: "In any research unit, the chance for gaining funding and publishing papers has always been connected with the ability of people working in the group and never been restricted only to [a person's] research title." We do not dispute the petitioner's assertion that a member of a research unit can demonstrate a critical role within the unit. However, in such case, the petitioner must also establish the distinguished reputation of that unit independent of the organization as a whole. The petitioner must show that his unit's reputation is distinguished when compared to the thousands of other research units at renowned institutions throughout the country. The petitioner's argument on appeal would lead to the conclusion that any person working in a "research unit" at a major university could satisfy this criterion, rendering it meaningless. This criterion, like all of the criteria, is intended to separate the petitioner from the majority of experienced professionals in the biomedical research field. Therefore, when determining the petitioner's eligibility, it is entirely appropriate to compare the petitioner to his colleagues from the Shanghai Institute of Cell Biology, the University of Texas Southwestern Medical Center, and Wayne State University. The importance of their roles and responsibilities dwarf those of the petitioner. A review of the documentation provided reveals no evidence to establish that the

petitioner has ever supervised or overseen other professional researchers at the above institutions. The record does not indicate the extent to which the petitioner has exercised substantial control over research groups or organizational decisions. The petitioner offers no evidence that he ever served as a named principal investigator or initiated government funded research projects. The petitioner thus fails to satisfy this criterion.

Clearly, the petitioner's colleagues have a high opinion of the petitioner and his work, as do other researchers who know the petitioner from collaborations with his laboratories. The petitioner's findings, however, do not appear to have yet had a measurable influence in the larger field. While numerous witnesses discuss the potential applications of these findings, there is no indication that these applications have yet been realized. The petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical applications does not persuasively distinguish the petitioner from other competent researchers.

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 biomedical researcher. Review of the record, however, does not establish that the petitioner has distinguished himself as a biomedical researcher 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 in his field, 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.