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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 03 013 50199 Office: CALIFORNIA SERVICE CENTER Date: DEC 03 2004

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)

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.

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 Administrative Appeals Office 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 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 earned sustained national or international acclaim at the very top level.

In regard to the criteria at 8 C.F.R. § 204.5(h)(3), the director's decision stated:

> These regulatory criteria, however, are only categories of evidence rather than types of documentation that automatically prove eligibility. Even if the petitioner fulfills three of the criteria, it does not necessarily mean that he or she has achieved sustained national or international acclaim and recognition and therefore, mandate a finding of eligibility.

We withdraw the first part of the second sentence above and replace it with the phrase: "Even if the petitioner *were to submit evidence addressing* three of the criteria..." We note here that, pursuant to the regulations, fulfillment of at least three of the regulatory criteria is adequate to satisfy the regulation at 8 C.F.R. § 204.5(h)(3). That said, it is important to note that the controlling purpose of the regulation at 8 C.F.R.

§ 204.5(h)(3) is to establish sustained national or international acclaim, and any evidence submitted to meet these criteria must therefore be to some extent indicative of such acclaim. The evidence presented must be evaluated and properly weighed in terms of the governing statute and regulations; it is not simply a matter of accepting that any piece of evidence presented under a particular criterion automatically satisfies that criterion. By way of analogy, Citizenship and Immigration Services sometimes requires copies of income tax returns to establish that the petitioner has the ability to pay the proffered wage to the beneficiary. The petitioner, however, does not automatically meet this requirement by submitting a copy of an income tax return. Rather, we must consider the content of that income tax return; if it does not show that the petitioner can afford to pay the beneficiary, then the petitioner cannot credibly argue that it met its obligation merely by supplying the copy of the tax return. The same reasoning applies to evidence presented under the criteria 8 C.F.R. § 204.5(h)(3).

This petition, filed on October 17, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a researcher the field of organ transplant immunology. Counsel states that, at the time of filing, the petitioner was working in the Metic Transplantation Laboratory, a specialized research facility associated with the University of Southern California (USC) Keck School of Medicine.

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 the 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 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.*

On appeal, the petitioner does not contest the director's finding regarding this criterion. Nevertheless, we will address the evidence submitted under this criterion.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the 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, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, and recommendations do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner initially submitted evidence of his membership in the American Society of Transplantation, The Transplantation Society, the American Urological Association, the American Society of Gene Therapy, the American Society of Human Genetics, the Japan Society of Clinical Oncology, the Japan Society for

Endoscopic Surgery, the Japanese Urologic Society for Renal Transplantation and Vascular Surgery, the Japan Society for Transplantation, and the Japanese Urological Association. The petitioner's initial submission, however, contained no evidence of the preceding organizations' bylaws or membership requirements to demonstrate that they require outstanding achievement as an essential condition for admission to membership. Nor was there any indication that the petitioner was selected for membership at the national or international level, rather than the local or regional level.

In response to the director's request for evidence regarding this criterion, the petitioner submitted two letters from employees of The Transplantation Society and the American Society of Transplantation.

The first letter, from Filomena Picciano, Accounting, Central Business Office, The Transplantation Society, states: "[The petitioner's] membership was granted upon review of his qualifications, and a determination that he has made significant contributions to the field of transplantation."

Based on her job position, it is not apparent that [redacted] is qualified to offer conclusions regarding the petitioner's admission to membership. Furthermore, according to the Society's official membership requirements, there is no indication that "significant contributions to the field of transplantation" are required for admission to membership in The Transplantation Society.[1]

The second letter, from Valerie Nedd, Membership Administrator, American Society of Transplantation, states:

> This letter is issued to confirm that, befitting his stature in the scientific community and in recognition of his outstanding achievements, [the petitioner] was made a member of this organization in February, 2001. This membership was granted upon review of his qualifications and a determination that he made significant contributions to our field.

According to this society's official membership requirements, there is no indication that "significant contributions" and "outstanding achievements" in the field of transplantation are required for admission to membership in The Transplantation Society.[2]

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[1] Information from the Transplantation Society's website, http://www.transplantation-soc.org (accessed November 10, 2004), describes the requirements for full membership as follows:

> Full members shall be physicians, surgeons, scientists or other specialists, who are actively engaged in the science or clinical practice of organ, cell and tissue transplantation. Physicians and surgeons shall have advanced training or equivalent experience in the science and practice of organ and tissue transplantation. Non-physicians shall hold a doctoral degree or equivalent, be eligible for formal certification in their respective fields as determined by the Council, and committed post-doctoral activity in transplantation. All members must display prior and sustained interest in the field.

[2] Information from the American Society of Transplantation's website, http://www.a-s-t.org (accessed November 10, 2004), describes the requirements for regular membership as follows:

The Transplantation Society and American Society of Transplantation membership requirements (as posted on the societies' official websites) do not indicate that the petitioner's membership in either society required outstanding scientific achievement or that he was evaluated by national or international experts in consideration of his membership. The record contains no evidence to establish that these two societies require outstanding achievement of their members in the same manner as highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

> *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.*

On appeal, the petitioner does not contest the director's finding regarding this criterion. Nevertheless, we will address counsel's earlier claim (in her letter responding to the director's request for evidence) that citation of the petitioner's work by other scholars constitutes qualifying evidence under this criterion.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner's work. As such, they cannot be considered qualifying published material about the petitioner's work. We cannot ignore that the articles citing the petitioner's work similarly referenced scores of other authors. In the petitioner's field, it is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field. Citations of the petitioner's work will be addressed under a separate criterion.

In response to the director's request for evidence, the petitioner provided an article from a 1999 issue of *URO Times* that summarized a neobladder replacement study coauthored by the petitioner. To qualify as major media, this publication should have significant national or international distribution. The petitioner, however, has provided no evidence indicating the national or international circulation of *URO Times*. Without evidence that this publication qualifies as major media, or evidence showing that the petitioner or his work has been the primary subject of articles published subsequent to 1999, we do not find that the petitioner has earned *sustained* national or international acclaim.

Regular membership shall be limited to physicians, surgeons, or scientists residing within the United States, Canada, or Mexico who are actively engaged in the science and clinical practice of organ and tissue transplantation. Physicians and surgeons shall have primary Board certification by American Boards or their foreign equivalents, and non-physicians shall hold a doctoral degree (Ph.D. or Pharm.D.) or their foreign equivalents. Physicians and surgeons shall have completed one year of committed advanced training or one year of experience in the science and clinical practice of organ and tissue transplantation. Non-physicians shall have demonstrated a committed interest by having at least one year of post-doctoral activity in transplantation. All members must display prior and sustained interest in the field.

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

The petitioner provided several witness letters in support of the petition.

Dr. [redacted] Associate Professor of Clinical Surgery and Pathology, and Section Chief, Hepatobiliary and Pancreas Surgery, University of California, Irvine (UCI), states that he has known the petitioner for over two years.[3] Dr. Imagawa states: "[The petitioner] has found cytokine gene polymorphism of TGF-beta 1 as a possible risk factor in PTLD [post-transplant lymphoproliferative disorder]. The petitioner's findings are important for the development of pre-transplant tests which will decrease the number of PTLD patients..."

Dr. [redacted] Professor of Urology and Surgery, USC School of Medicine, states that he has known the petitioner since 1999. Dr. [redacted] further states:

> While his abilities at our institute have been very impressive, his previous training allowed him to pursue projects as an exceptional physical scientist. His immediate accomplishments have been in the genotype project of post-transplantation lymphoproliferative disease (PTLD). He is presently working with our colleagues, Dr. Iwaki and Dr. Cicciarelli, in the area of transplant immunology, specifically establishing a basis for new biological research fields in genotyping of PTLD.

Dr. [redacted] Assistant Professor, Departments of Pathology and Biology & Molecular Biology, Keck School of Medicine, USC, states that he and the petitioner have collaborated on a number of research projects. Dr. [redacted] "[The petitioner's] studies showed that CD28 antigen expression was related to the graft survival of transplant patients. This finding has been of great importance in efforts to prevent organs from being rejected by transplant recipients and in curbing mortality rates in this population."

Dr. [redacted] Associate Professor, Department of Pathology, University of California, Los Angeles (UCLA), states that he has "known and worked with the petitioner for over two years in ATASC." Dr. Takemoto states:

> [The petitioner] concluded that the depression of CD28 antigen correlated with the duration of allograft survival and that depressed expression of the CD28 antigen on the T-cell surface indicates that impaired costimulatory signals may play a significant role in the long-term acceptance of transplanted allograph. These important findings were reported in two issues of the leading journal *Transplant Proceedings* and are evidence of the novel research [the petitioner] is engaged in.

The petitioner's authorship of published articles may demonstrate that his research efforts yielded some useful and valid results; however, it is apparent that any article, in order to be accepted in for publication, must offer new and useful information to the pool of knowledge. It does not follow that every individual whose original research is accepted for publication has made a major contribution to his field. Published work falls under

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[3] Dr. Imagawa is the President and Founder of Asian Transplant Awareness of Southern California (ATASC), for which the petitioner serves as a volunteer member.

another criterion; to satisfy this criterion, the petitioner must show not only that his work was published, but that his findings have major significance in the field.

The petitioner also submitted a letter of support from Dr. [redacted] formerly a postdoctoral fellow in the Department of Urology at USC, and now a postdoctoral fellow in the Department of Pediatrics at Stanford University School of Medicine. Dr [redacted] repeats the assertions of prior witnesses.

In response to the director's request for evidence, the petitioner submitted additional witness letters.

Dr. [redacted] Clinical Professor of Medicine/Cardiology, UCLA, states: "In my capacity as President of the International Society for Heart & Lung Transplantation, I was requested to review the professional credentials and accomplishments of [the petitioner] for the purposes of assessing the significance of his scientific contribution and his overall position in the field." Dr. [redacted] does not state that he was previously aware of the petitioner's work prior to reviewing his credentials. An opinion from a nationally known expert who was not previously aware of the alien, and is simply reviewing a resume or list of accomplishments, cannot establish national or international acclaim. Such a letter may, in fact, simply reinforce the conclusion that the alien is not well-known in the field, by demonstrating that the alien's reputation did not precede the specific request for a recommendation.

Dr. [redacted] states:

> [The petitioner's] accomplishments have a substantial bearing upon our ability to increase the available donor pool and the opportunity for transplantation for patients desperately waiting for available organs.... [The petitioner's] superlative research studies have produced unique data that would help eliminate that backlog. In other studies, he has been working with monitoring and preventing graft rejections, a common and deadly side effect of transplant surgery.

We accept Dr. [redacted] conclusion that the petitioner has contributed to the pool of knowledge in his field. However, there is no indication, based on Dr. [redacted] statements, that the petitioner's findings constitute a "contribution of major significance in the field" of transplant immunology. Dr. [redacted] letter notes that the petitioner's work is important, but it does not specifically identify a finding of the petitioner's that rises to the level of a nationally or internationally recognized discovery of "major significance" in transplant immunology.

For comparison, in his letter, Dr. [redacted] now President of the [redacted] Foundation, Los Angeles, California, and formerly a Professor of Surgery of UCLA, notes that he "developed the micro lymphocytotoxicity test in 1964, which was adopted in 1970 as the international standard method of tissue typing." The record contains no indication that the petitioner's research findings are of comparable significance to that of D[redacted]s major contribution in the organ transplant field.

In the same manner as previous witnesses, Dr. [redacted] states that the petitioner "discovered that the change of CD28 correlated with allograft survival rate and that depressed expression of the CD28 antigen on the T-cell surface indicates that impaired costimulatory signals may play a significant role in transplant immunology and allograft survival." Dr [redacted] describes this finding as an "original research contribution"

that "added significantly to . . . understanding rejection and ability to prevent it." Dr[redacted] also credits the petitioner with developing "novel diagnostic methods for post-transplant patients," but Dr[redacted] does not specifically identify these methods, nor does he discuss the extent to which medical institutions throughout the United States or any other country utilize these methods.

Dr.[redacted] Professor of Surgery, Pathology, Microbiology and Immunology, University of Miami, was also asked to provide an "assessment" of the petitioner. Dr. Miller states that the petitioner's findings "have a substantial bearing upon our ability to effect monitoring methods of transplantation to reduce transplantation rejection."

Dr. [redacted] Associate Professor, Department of Medicine, UCLA, states: "Specifically, [the petitioner] has determined that grafts from non-heart-beating and older donors to patients of certain sizes have high graft survival rate." Dr[redacted] also notes that the petitioner's post-transplantation monitoring study was "the only prospective study in the cytokine gene polymorphism in post-transplant lymphoproliferative disorder (PTLD)." The fact that the petitioner performed original research, or was among the first to make a particular discovery, carries little weight in this matter. Of far greater relevance is the importance to the greater field of the petitioner's discovery. The petitioner has not provided adequate evidence showing that his research, to date, has consistently attracted significant attention from throughout the greater field. The petitioner must show not only that his discoveries are important to researchers in Southern California, but at the national or international level as well.

In addressing the preceding letters, the director's decision stated:

> It cannot be ignored that most of the . . . witnesses have worked directly or indirectly with the petitioner. While their first-hand knowledge is valuable in terms of learning details of the petitioner's role . . ., it remains that nearly all of the witnesses have demonstrable connections with the schools or organizations where the petitioner worked.

On appeal, counsel takes issue with the director's conclusion regarding the letters of support, noting that Drs. [redacted] and [redacted] have "never worked with the petitioner." It remains, however, that the majority of the witnesses in this case have direct ties to the petitioner. It is also important to note that only one witness, Dr.[redacted] is from outside of Southern California. Therefore, we find that the witness letters presented are not adequate to show that the petitioner has earned a national reputation for his work (rather than a reputation limited mostly to individuals from universities in Southern California).

Letters from those close to the petitioner certainly have value, for it is those individuals who have the most direct knowledge of the petitioner's specific contributions to a given research project. It remains, however, that very often, the petitioner's projects are also the projects of the witnesses, and no researcher is likely to view his or her own work as unimportant. The director's observation that many of the witnesses have close ties to the petitioner is not intended to cast aspersions on the integrity of the witnesses; the director specifically indicated that their input was "valuable" in providing details about the petitioner's work. Nevertheless, these individuals became aware of the petitioner's work because of their close proximity to the petitioner; their statements do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we might expect with research findings that are of "major significance." A scientific researcher

with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. Here, the letters of support offered by the petitioner are not adequate to show that his prior work has earned him sustained acclaim at the national or international level.

In sum, while the above witnesses have stated in general terms that the petitioner is a respected and highly skilled research scientist who is doing important work in his field, the documentation presented is not adequate to support the conclusion that the petitioner's work in transplant immunology is nationally or internationally recognized as a major contribution.

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 of his authorship of articles appearing in publications such as *Urology*, *Transplantation Proceedings*, and the *Journal of Urology*. The petitioner also submitted evidence showing that an article he coauthored in 1999 garnered 39 citations. These citations of the petitioner's article demonstrate other researchers' interest in, and reliance on, his work.[4] The director concluded that petitioner's publication record and citation history were adequate to satisfy this criterion. The AAO concurs.

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

We have consistently found that this particular criterion applies to the visual arts rather than scientific research.

On appeal, counsel argues that the petitioner's presentations at scientific conferences constitute comparable evidence under 8 C.F.R. § 204.5(h)(4). That regulation allows for the submission of comparable evidence, but only if the ten criteria "do not readily apply to the petitioner's occupation." Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to the alien's field. Of the ten criteria, at least eight readily apply to the petitioner's occupation. Where an alien is simply unable to meet three of the regulatory criteria, the wording of the regulation does not allow for the submission of comparable evidence.

In the fields of science or medicine, acclaim is generally not established by the mere act of presenting one's work at a scientific conference. The record contains no documentation demonstrating that the presentation of one's work is unusual in the petitioner's field or that the invitation to present at conferences where the petitioner spoke was a privilege extended to only a few top researchers. Participation in scientific conferences and symposia of the petitioner's kind is routine and expected in the medical research community. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field. The record contains no evidence showing that the petitioner's conference presentations commanded an unusual level of attention in

[4] It is noted, however, that, according to the citation history submitted by the petitioner, no other articles that he authored have received more than seven independent citations.

comparison to other conference participants or that the petitioner has served as a keynote speaker at a national or international medical conference.

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

The record adequately establishes that USC's Metic Transplantation Laboratory has a distinguished reputation, but the record offers little or no evidence in regard to Nagoya University's Department of Urology. We cannot ignore that the petitioner's role at USC is that of a "Research Fellow." The record contains no evidence showing the extent to which the petitioner has exercised substantial control over personnel or research decisions executed on behalf of the Metic Transplantation Laboratory. Nor is there evidence showing that the petitioner has directly secured significant amounts of research funding as a principal investigator (in the same manner as many of his witnesses). We note here that the majority of witnesses in this case hold higher positions of authority as research supervisors, directors and heads in their respective divisions or departments. This criterion, like all of the criteria, is intended to separate the petitioner from the majority of his colleagues in the transplantation immunology field. Therefore, when determining the petitioner's eligibility, it is entirely appropriate to compare the petitioner's role to that of his colleagues at USC. In this case, it is immediately apparent that the importance of the role of individuals such as Professors [redacted], and [redacted] far exceeds that of the petitioner. While we accept that the petitioner has contributed to research projects at USC and Nagoya University, it has not been shown that his role is any more significant than that of other researchers employed by those institutions. For the above reasons, we find that the petitioner's evidence falls short of establishing that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

In this case, we concur with the director that the evidence presented satisfies only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every scientific researcher who has published or presented the results of his work, or earned the respect of local colleagues, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from experts in the field, without reaching the top of that field.

It has not been shown, nor does the overall tone of the witness letters presented in this case suggest, that the petitioner's accomplishments are comparable to those of scientific experts such as Professors Terasaki, Kobasigawa, Yokoyama, and Mendez. That these individuals have demonstrated achievements that far exceed those of the petitioner demonstrates that, however respected the petitioner may be and whatever future promise his career may hold, the petitioner has not yet reached the top of his field. Even if it were unanimously agreed that the petitioner would one day reach such a level, this visa classification is reserved for those already at the top of their field, not for those who are expected eventually to reach that level.

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. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself as a research scientist 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. 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.