U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

B2

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FEB 26 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 016 55704

IN RE: Petitioner:
Beneficiary: [redacted]

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.

Marie Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, on June 16, 2003. On July 21, 2003, the petitioner filed a motion to reopen (WAC 03 221 51844) that the director erroneously dismissed as untimely on August 10, 2003. The matter is now before the Administrative Appeals Office on appeal of the director's decision of August 10, 2003. The appeal will be dismissed.

In support of the present appeal, the petitioner submitted a United States Postal Service certified mail receipt, number 7002 2410 0003 4760 4835, showing that the California Service Center received the motion to reopen on July 21, 2003.[1] The regulation at 8 C.F.R. § 103.5a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period (as in this case). 8 C.F.R. § 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. Here, the Service Center mailed its decision to the petitioner and to counsel on June 16, 2003. Allowing for the extra three days and the weekend at the end of the 33-day period, the motion to reopen received on Monday, July 21, 2003 was indeed timely.

The record further reflects that on July 23, 2003, the petitioner filed an appeal that the director rejected as untimely on August 10, 2003. The envelope in which the original appellate documentation was mailed bears a sticker with a United States Postal Service certified mail receipt number of 7002 2410 0003 4760 4767. However, on appeal, counsel has not presented the corresponding certified mail receipt showing the date that this documentation was received at the Service Center. According to the Service Center's date stamp on the outside of the envelope and Form I-290B, Notice of Appeal, the Service Center received the appellate documentation on July 23, 2003 (two days late). The regulation at 8 C.F.R. § 103.3(a)(2)(i) states that an appeal must be filed with the office where the unfavorable decision was made within 30 days after service of the decision. Here, the Service Center mailed its decision to the petitioner and to counsel on June 16, 2003. Even allowing for the extra three days and the weekend at the end of the 33-day period pursuant to 8 C.F.R. § 103.5a(b) and 8 C.F.R. § 1.1(h), the appellate submission, received on Wednesday, July 23, 2003, was untimely. Without evidence of a corresponding certified mail receipt for U.S. Postal Service item 7002 2410 0003 4760 4767, we must concur with the director's determination that the original appellate documentation was not timely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that "[i]f an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2) of this part or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case." 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." The director concluded that the petitioner's appellate submission did not meet the requirements of a motion to reopen or reconsider, and summarily dismissed the motion.

8 C.F.R. § 103.5(a)(6) states that "[a] field office decision made as a result of a motion may be appealed to the AAU only if the original decision was appealable to the AAU." In this matter, as the original decision was appealable to the AAO, the AAO has the regulatory authority to review the director's decision regarding this petition.

Based on our review of the documentation submitted by the petitioner, we find that the petitioner did present a timely and proper motion to reopen. In this decision, the AAO shall review the entire record of proceeding,

---

[1] The motion, however, was date stamped July 23, 2003, two days after the certified mail receipt indicates that the motion was delivered to the California Service Center.

including the director's original denial of the petition, and any further evidence submitted by the petitioner as of the filing date of the most recent appeal.

The petitioner is a gymnastics instruction facility. It seeks to classify the beneficiary 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 athletics. The director determined the petitioner had not established that the beneficiary has earned 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 the beneficiary has earned sustained national or international acclaim at the very top level.

This petition, filed on October 17, 2002, seeks to classify the beneficiary as an alien with extraordinary ability as a gymnastics coach. At the time of filing, the beneficiary had been employed since August 2002 as a gymnastics coach at the National Gymnastics Training Center in Aliso Viejo, California. The record contains documentation indicating that, prior to taking that position, the beneficiary worked in Argentina as a gymnastics coach at the Bet Am Medinath Israel Jewish Sport and Social Institution (1989-2000), International Institute Tel Aviv Central (1990-2002), and Scholem Aleivem School (2001-2002). The record also indicates that from 1998 to November 2001, the beneficiary worked as a "Manager and Coordinator" at Keski Gym in Buenos Aires, Argentina and that in 1997 the beneficiary served as "Institutional Sport Manager (Central Office and Camp)" for the Social Sefaradi Jewish Center. Finally, from 1995 to 1997, the beneficiary served as a "Summer Holidays Camp Manager" for Bet Am del Oeste Jerusalem in Argentina.

On appeal, counsel notes that beneficiary presently holds O-1 nonimmigrant visa status. The approval of an O-1 nonimmigrant visa petition on behalf of a given alien does not in any way compel the Citizenship and Immigration Services (CIS) to approve a subsequent visa petition under section 203(b)(1)(A) of the Act on behalf of that same alien. Each petition must be adjudicated on its own merits based on the evidence submitted to support that petition. Furthermore, there is no statute, regulation, or case law that requires the approval of an immigrant visa petition under section 203(b)(1)(A) of the Act when the alien beneficiary already holds an O-1 visa.

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, counsel 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.*

It is not clear that significant awards exist for gymnastics coaches. However, nationally or internationally recognized prizes or awards won by teams or individuals coached by the beneficiary may be considered as comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4).

The petitioner submitted a translated letter from Marcelo Tandeitnic, President, and Secretary, Bet Am del Oeste Jerusalem, a local community center in Argentina. Their letter states:

> We hereby certify that Ms. Ini...in conjunction with her trainer, [the beneficiary], has participated with an outstanding performance, obtaining the second place in the Children Category "A" within the Sports Gymnastics discipline in the National Tournament organized by FACCMA [Federacion Argentina de Centros Communitarios Macabeos or, in English, Argentine Federation of Maccabee Community Centers] in the month of November, 1996.

According to its website at *www.faccma.org*, the mission of FACCMA is to support its affiliated institutions in taking steps to promote the Judeo-Argentine lifestyle and to enrich the free time of its associates. FACCMA's community objective is to work together with the greater Argentine community, and with Jewish youth in particular. Another objective of FACCMA is to contribute to the unity and harmony of the Judeo-Argentine community.

Further information provided by the petitioner states:

> FACCMA is a non-profitable institution that is constantly developing social, sport, cultural, and artistic integrating activities for thousands of people within the community. It gathers institutions from Capital Federal, the Greater Buenos Aires, and the rest of the country reaching 50,000 members of all ages. Founded in 1949, it is one of the pillars of the Jewish community, and it represents it [sic] carrying out social and sport activities.

* * *

> As a reaffirmation of the above said, FACCMA generates a common ground for thousands of Jews, making proposals that later become part of their everyday lives.

Also provided by the petitioner were photographs from the mid-1990's of the beneficiary standing with children that she alleges to have coached. Explanatory text appearing on the page above one of the photographs (said to have been taken in 1994) indicates that Team Bet Am del Oeste Jerusalem took first place in the "Children 'A' Category International Tournament of Uruguay, Chile and Argentina." Aside from the undated photograph and an assertion from the petitioner, the record contains no contemporaneous, first-hand evidence to confirm the international scope of the tournament. Section 203(b)(1)(A)(i) of the Act, however, requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide sufficient evidence to establish that competitive awards received by the beneficiary's gymnasts enjoy significant national or international stature. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In response to the director's request for evidence pertaining to this criterion, the petitioner provided a translated letter from [redacted] Executive Director, FACCMA, stating:

> I hereby certify that [the beneficiary] has participated in the 17th Youth Maccabee Games that took place in Hebrew County, Buenos Aires, between October 24th and 27th, 1996, in the role of Sports Gymnastics Team Coach for BAMI [Bet Am Medinath Israel Jewish Sport and Social Institution] and West Bet Am [Bet Am del Oeste Jerusalem].
>
> One thousand two hundred participants from around the country and a delegation of 80 athletes representing Chile, a country invited to compete, were part of the tournament.
>
> Final Results:
>
> 1st Place for Individual in the Children A category...West Bet Am
>
> 2nd Place for Team in the Children B category...BAMI
>
> 2nd Place for Individual in the Youth category...BAMI

The petitioner has not established that the "Children A" category or the "Youth Category" represents the highest level of competition in the sport of gymnastics. It has not been shown that the Maccabee Games competition included top gymnasts in the sport, regardless of age or religion. Nor has the petitioner shown that gymnasts under the beneficiary's tutelage have competed at the top national or "elite" gymnastics level. Moreover, the record does not indicate that the beneficiary's gymnasts win a disproportionate quantity of medals when compared to other gymnasts. Finally, aside from the Maccabee Games, we note that awards won by the beneficiary's gymnasts at various other local and regional Argentine competitions do not constitute evidence of national or international recognition.

Large-scale national or international athletic competitions typically issue event programs listing the order of events, the name of each specific event, the names of all of the participating athletes, and their competitive ranking. At a competition's conclusion, results are usually provided indicating how each participant

performed in relation to the other competitors in his/her individual events. The petitioner, however, has provided no such evidence for any of the competitive events where the beneficiary coached gymnasts. The vague and limited evidence presented here fails to demonstrate the beneficiary's sustained acclaim as a top Argentine, United States, or international gymnastics coach.

We further note that, pursuant to the statute, the petitioner must demonstrate that the beneficiary has earned *sustained* acclaim at the national or international level. Here, the record contains no evidence of awards won by the beneficiary's gymnasts from 1997 through the petition's filing date. Without evidence showing that the beneficiary's gymnasts have competed successfully at the national or international level subsequent to 1997, the petitioner has failed to establish the beneficiary's *sustained* national or international acclaim as gymnastics coach.

The record also contains three letters issued by the Argentine Hebrew Social Circle in the late 1980's commending the beneficiary for her successful completion of various job assignments (such as participating in the inauguration of a country club sports facility). These letters represent institutional, rather than national or international, recognition. Without evidence showing that the beneficiary has established a successful history of coaching gymnasts who regularly competed and earned awards at the highest national or international level of competitive gymnastics, we cannot conclude this criterion to have been satisfied.

> *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.*

In response to the director's request for evidence pertaining to this criterion, the petitioner submitted two letters from [redacted] stating that the beneficiary served as a member of the Sub-Commission of Gymnastics for FACCMA and as a National Board Delegate for FACCMA. Neither letter offered information regarding FACCMA's individual membership requirements. According to evidence from FACCMA's website presented by the petitioner, this association has "50,000 members of all ages."

Also submitted was a letter from the D[redacted] Coordinating Physician, Sport Science Investigation, City Government of Buenos Aires, Secretary of Education, Sports Institute.

> We hereby certify that [the beneficiary], regular student of Sport Science Investigation Superior Course, taken at this facility has attended as HONORARY ASSISTANT to the SPORTS BIOMECHANICS LAB at the High Performance in Sports National Center (CENARD), under the supervision of licensed professor Luis Commso, during 1993 and 1994, on Fridays from 9am to 12pm and 1pm to 5pm, during the months of study. She performed multiple activities corresponding to that of the assistants...

Participation in an advanced sports science training course, or part-time work in a sports biomechanics laboratory, does not constitute a "membership" for purposes of this criterion. Regardless, the petitioner has not provided evidence demonstrating that becoming a "regular student" or "Honorary Laboratory Assistant" required outstanding achievement in the sport of gymnastics.

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, 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 associations that evaluate membership applications at the local chapter level would not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. 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 director concluded that the petitioner had not shown that the beneficiary's memberships qualify under this criterion. The director acknowledged the submission of letters, noting that they were unsupported by "corroborative evidence." The director also noted that the petitioner did not submit FACCMA's specific membership requirements.

On appeal in response to the director's findings, provides two letters listing the "selection criteria" for being chosen as a Delegate to the FACCMA Maccabee Games National Board and for belonging to the FACCMA Gymnastics Commission. The majority of the selection criteria listed by Mr. relate to general professional accomplishments rather than outstanding achievement in the sport of gymnastics. We further note that Mr. assertions regarding FACCMA's requirements are once again unsupported by any corroborative evidence. For example, the petitioner has not provided published membership bylaws or any other contemporaneous, objective documentation indicating that these requirements were in effect at the time of the beneficiary's selection. Finally, we cannot ignore that the plain wording of the regulation requires "[d]ocumentation of the alien's membership in associations in the field for which classification is sought." In this case, the beneficiary's field is the "sport of gymnastics." Accordingly, based on the evidence presented in regard to FACCMA, we cannot conclude that FACCMA is a gymnastics (rather than a religious) association in the same manner as organizations such as USA Gymnastics or the International Federation of Gymnastics (whose missions are dedicated entirely to that one sport).

In sum, the documentation presented does not establish that the associations in which the beneficiary holds membership required outstanding achievement in gymnastics or that she was evaluated by recognized national or international sports experts in consideration of her membership.

> *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.*

We concur with the director's findings in regard to this criterion. In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted an internal FACCMA newsletter article (year of publication unknown). Text on the right side of the FACCMA newsletter states: "FACCMA Informative Bulletin, Circulation Institutional." A brief mention in an internal newsletter does not constitute publication in "major media."

Also submitted was a piece published in *Clarin* (1996) that cites the beneficiary's first name (along with three others) in the last sentence of the article. Rather than discussing the beneficiary or her individual coaching accomplishments, the article is about the Panamerican Maccabee Games in general. The plain wording of the regulation, however, requires the petitioner to submit "published materials about the alien," and an article that barely mentions the beneficiary would not satisfy this criterion. We further note that the statute and regulations required the beneficiary's acclaim to be sustained. A brief mention in a single newspaper article in 1996 does not establish that the beneficiary has captured sustained attention from major national or international sports media.

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.

We withdraw the director's finding that the evidence presented satisfies this criterion. In an occupation where "judging" the work of others is an inherent duty of the occupation, such as an instructor, teacher, professor or coach, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, a petitioner must demonstrate that the alien's sustained national or international acclaim resulted in her selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level and involve other accomplished professionals in the beneficiary's field. For example, judging an Olympic competition would carry far greater weight than judging a local age-group competition.

In response to the director's request for evidence pertaining to this criterion, the petitioner submitted a second letter from [redacted] and [redacted] of Bet Am del Oeste Jerusalem stating that the beneficiary judged several "children and youth competitions" from 1994 to 1996. Without evidence showing that the beneficiary has judged top national or international gymnastic competitions (such as those at the elite level, for example), rather than those limited to a particular age group or religious affiliation, the petitioner has not demonstrated that the beneficiary has earned national or international recognition at the very top of the gymnastics field. We further note the absence of evidence showing that the beneficiary has judged competitions on a national or international level since the mid-1990's.

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

In response to the director's request for evidence pertaining to this criterion, the petitioner submitted two letters from [redacted] His letters discuss the beneficiary's participation "in the organization and execution of tournaments and meetings in the children and youth areas" and her coordination of "activities taking place at...CENARD during the 8th Panamerican Maccabee Games." Rather than describing the beneficiary's contributions as a coach, the two letters instead focus on the beneficiary's work as a special events coordinator. In this case, the petitioner has not shown that that the beneficiary has produced any "elite" level gymnasts earning top national titles or spots on the Argentine or United States Olympic teams, for example. We do not dispute that the beneficiary has contributed to the skill development of the gymnasts competing in the recreational Maccabee league. However, beyond the less competitive Maccabee age group competitions, there exists the "elite" or national level that has thus far eluded gymnasts under the beneficiary's direct tutelage.

An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. In this case, a significant portion of the petitioner's evidence is in the form

of letters solicited from and If the beneficiary's coaching achievements are not widely praised outside of her employers and FACCMA colleagues, then it cannot be concluded that she has earned sustained national or international acclaim as one who has reached the very top of the sport of gymnastics. In this case, the beneficiary has not demonstrated any coaching contributions that have been unusually influential and acclaimed throughout her sport. Nor does the evidence show that the beneficiary, as a coach, has contributed significantly more to her sport than have almost all other gymnastics coaches in Argentina or the United States. While the witnesses have stated in general terms that the beneficiary is a respected and skilled gymnastic coach, there is no consensus that the beneficiary enjoys a national reputation in the United States, Argentina, or any other country. Rather, the beneficiary appears to have earned a reputation only among her personal and professional acquaintances.

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 beneficiary performed a leading or critical role for an organization or establishment with a distinguished reputation, a petitioner must establish the nature of the beneficiary's role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted letters verifying the beneficiary's employment or involvement with FACCMA, the Bet Am Medinath Israel Jewish Sport and Social Institution, the International Institute Tel Aviv Central, the Scholem Aleivem School, the Keski Gym, the Social Sefaradi Jewish Center, and Bet Am del Oeste Jerusalem. We do not dispute that these organizations hold distinguished reputations as social organizations within Argentina's Jewish community. The petitioner, however, must demonstrate that these organizations enjoy distinguished reputations as training facilities in the "sport of gymnastics." The evidence presented under this criterion does not show that gymnastics teams from the above organizations win a disproportionate quantity of medals when compared to those from other gymnastics training facilities. Nor has the petitioner identified any Argentine national gymnastic champions (beyond the Maccabee league) or Olympic medalists who developed their athletic talents through training received at the above institutions.

In regard to the beneficiary's individual role, we concur with the director that the letters presented offer few specific details about her overall importance as a gymnastics coach. We further note that the petitioner has provided no evidence indicating that the beneficiary has ever served as a head coach for Argentine or U.S. national champions or Olympians. Her coaching involvement in the Maccabee gymnastics league falls well short of competition at the top level of her sport.

For comparison, Citizenship and Immigration Services (legacy INS) has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *See* 56 Fed. Reg. 60897, 60899 (November 29, 1991). Likewise, it does not follow that a coach whose gymnasts were limited to age group recreational competitions in the Maccabee league should necessarily qualify for an extraordinary ability immigrant visa. To do so would contravene Congress' intent that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

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 has failed to demonstrate the beneficiary's receipt of a major

internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

A review of the record does not establish that the beneficiary has distinguished herself as a gymnastics coach to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the beneficiary shows talent as a gymnastics coach, but it is not persuasive that her achievements set her significantly above almost all other coaches in the sport. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In conclusion, while the director erred in dismissing the petitioner's motion as untimely, we concur with the director's analysis in the original notice of denial and find that the grounds cited therein were couched in the pertinent statute and regulations. CIS notes its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within the power of CIS (legacy INS) to formulate. *Helvering v. Gowran*, 302 U.S. 238 (1937); *Securities Comm'n v. Chenery Corp.*, 318 U.S. 86 (1943); and *Chae-Sik Lee v. Kennedy*, 294 F.2d 231 (D.C. Cir. 1961), *cert. denied*, 368 U.S. 926 (1961).

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

ORDER: The appeal is dismissed.