



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER  
EAC 03 065 52592

Date: **MAY 28 2008**

IN RE: Petitioner: [REDACTED]  
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:

SELF-REPRESENTED

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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.

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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 sustained national or international acclaim at the very top level.

This petition, filed on December 23, 2002, seeks to classify the petitioner as an alien with extraordinary ability as an independent consultant for agricultural and environmental projects. The petitioner earned his Master of Agriculture degree from the University of Minnesota in 1992.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 petitioner has submitted evidence pertaining to 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.*

The petitioner submitted a July 9, 1991 letter from [REDACTED], Program Manager and Counselor, International Student Funding, University of Minnesota, stating: "[The petitioner] is a graduate student in good standing at the University of Minnesota. For the 1991-92 academic year, [the petitioner] will be the recipient of a Foreign Student Tuition Scholarship. The total value of this award is \$6600.00."

The petitioner also submitted a November 22, 1991 letter addressed to him from [REDACTED], Dean, College of Agriculture, University of Minnesota, stating:

I am pleased to inform you that you have been selected to receive a \$1500 grant from the Thomas H. Canfield Scholarship Fund for the 1991-92 academic year. Congratulations!

The College of Agriculture is making this money available to continuing students in good academic standing who have financial need of at least \$750, as determined by the Office of Student Financial Aid.

The petitioner's receipt of tuition assistance from his alma mater does not constitute his receipt of a nationally or internationally recognized prizes or awards for excellence in his field of endeavor. University study is not a field of endeavor, but rather training for future employment in a field of endeavor. Consideration for the preceding scholarships was limited to students enrolled at the University of Minnesota. Simply being a student in "good standing" is not "excellence in the field" or an indication that the petitioner "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 petitioner's receipt of the preceding scholarships offers no meaningful comparison between him and agricultural or environmental professionals already working in the field.

The petitioner also submitted a certificate of appreciation in recognition of his "service and dedication to Coffman Memorial Union," a student center located at the University of Minnesota. On appeal, the petitioner submits a December 3, 2002 letter from the president of Georgetown University referring to the petitioner as a "dedicated staff member" and acknowledging his "Georgetown career." An accompanying certificate from Georgetown University dated December 2002 states: "5 Year Award presented to [the petitioner] in

Recognition and Appreciation of Your Dedicated and Continued Service to the University Community.”<sup>1</sup> The preceding honors reflect institutional recognition rather than national or international recognition for excellence in the field.

The petitioner also submitted the following:

1. An April 21, 2000 letter from ██████████, Managing Editor, American Biographical Institute, Inc. (ABI), a “publisher of biographical reference works,” informing the petitioner of his “nomination” for inclusion in a biographic reference publication entitled *Leaders of Science, Technology and Engineering*. ██████████ states: “I am excited to offer you the chance to have your profile appear within the pages of this new edition. . . . I urge you . . . to fill out and return the questionnaire by the date indicated.”
2. A “Scientific Achievement Award” certificate from the ABI confirming inclusion of the petitioner’s biographic profile in the publication *1000 World Leaders of Scientific Influence*.
3. An August 3, 2001 letter from ██████████, President of ABI, informing the petitioner of an “opportunity to become an ABI Fellow.” The letter refers to the petitioner as a nominee and stresses that ABI’s selection of “several hundred” fellows will be “based on those responding first.” The letter also requests “a small endowment fee . . . to help . . . with administrative and supporting costs.”
4. A May 17, 2002 letter from ██████████ of the ABI expressing “disappointment” that the petitioner had not responded to earlier ABI correspondence regarding his “nomination to receive the American Medal of Honor.” The letter requests that the petitioner submit his acceptance by June 16, 2002.
5. An October 4, 2002 letter from ██████████, General-in-Residence, United Cultural Convention (UCC), informing the petitioner of his “nomination” for the UCC’s “International Peace Prize.”<sup>2</sup> The letter instructs to the petitioner to “reply to the nomination by November 3, 2002.”
6. An August 8, 2003 letter from ██████████ of the ABI informing the petitioner of his inclusion on a “nominations list” for one hundred awardees receiving a “Congressional Medal of Excellence.” The letter requests that the petitioner submit his “acceptance” by September 6, 2003.
7. A September 5, 2003 letter from ██████████ of the ABI informing the petitioner of his “invitation for induction into the American Hall of Fame.” The letter requests “a response to this nomination by October 4, 2003.”
8. A September 6, 2002 letter from ██████████, Director General, International Biographical Centre (IBC), a publisher owned by Melrose Press Ltd., informing the petitioner of his “selection for induction as a founding recipient of the Order of Biographical Excellence.” The letter requests that the petitioner respond after reviewing accompanying marketing material. This marketing material states: “The IBC has commissioned a range of Regalia commemorating your selection for . . . the Order of Biographical Excellence. Our expert craftsman designer has worked . . . to ensure that the gravity of selection and the Centre’s traditional purpose are both

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<sup>1</sup> Nothing in the record specifies the nature of the petitioner’s work for Georgetown University or identifies his job title.

<sup>2</sup> The October 4, 2002 letter from ██████████ of the UCC bears the same address as the letters he wrote as president of the ABI: 5126 Bur Oak Circle, Raleigh, NC 27622.

reflected in the unique and historic design.” The petitioner did not include information regarding the cost of the IBC’s “regalia.”

There is no evidence showing that the preceding honors from the ABI and the IBC constitute nationally or internationally recognized prizes or awards for excellence in the petitioner’s field of endeavor. These biographic reference book companies regularly publish numerous editions and market their awards to the thousands of individuals they seek to include in their professional directories. For example, the April 21, 2000 letter from [REDACTED] of the ABI states that her company has printed “numerous editions” during its “three decades of reference publishing.” Further, the August 3, 2001 letter from [REDACTED] of the ABI requests payment of an “endowment fee.” Based on the evidence submitted by the petitioner, it is reasonable to conclude that the ABI and the IBC are actually vanity presses that market their “awards” to those professionals they seek to include in their biographical dictionaries. Vanity presses of this type often market “awards” or “regalia” which they issue to recipients only after receiving a fee. True awards for excellence in the field, however, are not contingent upon payment of a fee.

With further regard to items 3, 4, 5, 6, and 7, none of these letters specify what the petitioner accomplished to be nominated, nor does the record include evidence showing these awards were ultimately bestowed upon the petitioner. The plain language of this regulatory criterion requires evidence of the petitioner’s “receipt” of nationally or internationally recognized “prizes or awards” for excellence in the field rather than mere nominations.

Regarding the petitioner’s “Scientific Achievement Award” from the ABI and “selection for . . . the Order of Biographical Excellence” from the IBC (items 2 and 8), there is no evidence showing that these awards commanded a significant level of recognition beyond the presenting organizations consistent with sustained national or international acclaim in the field. The plain language of this regulatory criterion specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion.

In light of the above, the petitioner has not established that he meets this 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.*

In order to demonstrate that membership in an association meets this criterion, a 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, minimum education or experience, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, 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 submitted his yearly membership cards (1998, 1999, 2001, and 2002) for the American Agricultural Economics Association (AAEA). The record, however, includes no evidence (such as membership

bylaws or official admission requirements) showing that the AAEA requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one.

On appeal, the petitioner argues that his "invitations . . . to present papers during international conferences in the Arts, Sciences and Technology" are sufficient to meet this regulatory criterion.

The petitioner's response to the director's request for evidence included marketing material inviting him to the "30<sup>th</sup> Anniversary International Congress on Science, Culture and Arts in the 21<sup>st</sup> Century" (July 2004) in Dublin, Ireland. This material states:

Co-hosted by the American Biographical Institute (USA) and the International Biographic Centre (UK), the Congress will take place at the Berkeley Court Hotel. . . .

\* \* \*

In addition to the social get-togethers such as the formal opening Reception and Final Gala Grand Banquet, your ABI and IBC hosts will organize entertaining optionals on an individual fee or package basis.

\* \* \*

The most important deadline to remember now is placing a deposit by December 31, 2003. . . . This exclusive tour will only be available to Congress delegates on a first-come, first-serve basis, as numbers are strictly limited.

The petitioner's appellate submission includes the following:

1. An April 8, 2003 e-mail confirming the petitioner's participation in a World Bank Development Marketplace Information Session on April 10, 2003.
2. A May 14, 2003 e-mail inviting the petitioner to attend a workshop in Ethiopia in June 2003 entitled "Sub-Saharan Africa Consultation on an International Assessment of the Role of Agricultural Science and Technology in Reducing Hunger and Improving Rural Livelihoods."
3. A November 5, 2004 e-mail inviting the petitioner to attend the International Conference on Technology, Knowledge and Society at the University of California, Berkeley in February 2005.
4. A February 11, 2005 e-mail inviting the petitioner to attend the Third International Conference on New Directions in the Humanities at Cambridge University in the United Kingdom in August 2005.
5. An October 24, 2005 e-mail inviting the petitioner to attend the International Conference on the Arts in Society at the University of Edinburgh, Scotland in August 2006.
6. An October 24, 2005 e-mail inviting the petitioner to attend the Symposium on Technology, Knowledge and Society at McGill University in Canada in June 2006.
7. An October 5, 2006 e-mail inviting the petitioner to attend the Third International Conference on Technology, Knowledge and Society at Cambridge University in January 2007.

8. An October 9, 2006 e-mail inviting the petitioner to attend the Symposium on the Humanities at Columbia University in New York in February 2007.

All of the preceding conferences were held subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, invitations to attend various conferences are not tantamount to "membership in associations in the field." Further, there is no evidence showing that items 3 through 8 and the ABI/IBC congress in 2004 relate to the petitioner's work as an environmental or agricultural consultant. Finally, aside from the World Bank Development Marketplace Information Session on April 10, 2003, there is no evidence showing that the petitioner attended the remaining conferences.

In light of the above, the petitioner has not established that he meets this criterion.

*Published material 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.*

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. To qualify as major media, the publication should have significant national or international distribution. 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.<sup>3</sup>

The petitioner submitted a copy of his biographic profile in the ABI's *1000 World Leaders of Scientific Influence* (2002). The petitioner's profile consisted of eleven lines of text and appeared on page 179 along with the profiles of four other individuals. There is no evidence (such as circulation statistics) showing that this ABI reference volume qualifies as a major publication. Further, the editors of this publication do not single out the petitioner as superior to the hundreds of other individuals featured in the 2002 edition. We cannot conclude that the petitioner's limited biographic entry into such a sizable tome would constitute qualifying published material about the petitioner and his work. Appearing as one of a thousand successful individuals in a frequently published directory is not evidence of sustained national or international acclaim.

In light of the above, the petitioner has not established that he meets this criterion.

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

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her

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<sup>3</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “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). For example, evaluating the work of accomplished professors on a national panel of experts is of far greater probative value than evaluating the work of students or trainees.

In response to the director’s request for evidence, the petitioner submitted an August 6, 2003 letter addressed to him from [REDACTED] of the IBC, Cambridge, England,<sup>4</sup> stating:

I will appreciate it if you could review the attached research project and submit the accompanying the [sic] recommendation form on behalf of [REDACTED] who is applying for a post-doctoral fellowship at the Radcliffe Institute for Advanced Study at Harvard University.

Feel free to contact me if you need additional information.

I look forward to receiving your response.

The August 6, 2003 letter from [REDACTED] was accompanied by a document entitled “Fellowship Recommendation Form 2004-2005.” This document lists “[REDACTED]” in the blank next to “Applicant’s Name” and the petitioner’s name in the blank next to “Name of Recommender.” At the bottom of this form it states: “Please return to the Radcliffe Application Office, 34 Concord Avenue, Cambridge, MA 02138, postmarked by October 1, 2003.

The preceding evidence submitted by the petitioner is contradictory. The August 6, 2003 letter indicates that the petitioner’s response should be sent to [REDACTED] at the IBC in Cambridge, England. The Fellowship Recommendation Form, however, states that the recommendation form should be sent to the Radcliffe Application Office, 34 Concord Avenue, Cambridge, MA 02138. Further, the record does not establish what role, if any, the IBC was assigned regarding evaluation of post-doctoral fellowship applicants for the Radcliffe Institute for Advanced Study at Harvard University. With regard to this contradictory evidence, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Aside from the preceding inconsistencies, we note that the petitioner was requested to perform the review and recommendation subsequent to the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the

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<sup>4</sup> The IBC letterhead bears an address of “Cambridge CB2 3QP England.”

AAO will not consider this evidence in this proceeding. Further, there is no evidence showing that the petitioner actually completed the review and recommendation.

On appeal, the petitioner states:

I am submitting evidence of an Environmental Impact Assessment Report Review that I did for the World Bank. I am also submitting evidence of the World Bank, the Ethiopian Ministry of Agriculture and the International Livestock Research Institute requesting my insights in guiding the consultation process of the International Assessment of Agriculture Science and Technology for Development.

There is no evidence showing the level of acclaim associated with these activities or the means by which the petitioner was selected to participate. The petitioner has not established that the preceding activities were tantamount to his participation, either individually or on a panel, as a judge of the work of others in his field. Further, the documentation submitted by the petitioner on appeal (such as the Environmental Impact Assessment review) reflects that his work for the preceding projects occurred subsequent to the petition's filing date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding.

In light of the above, the petitioner has not established that he meets this criterion.

*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 papers he authored, but there is no evidence showing that his work was published in professional or major trade publications or some other form of major media.

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

On appeal, the petitioner states:

I am submitting evidence of the display of my proposal on the World Bank's website during the Development Marketplace Global Competition. I am also submitting evidence of the Food and Agricultural Organization of the United Nations and the World Bank requesting my services as a Safeguards (environmental) Specialist.

The petitioner's appellate submission includes a September 26, 2006 e-mail informing him that he was being considered as a "possible candidate" for a lending operation in Eritrea. The record, however, includes no evidence showing that the petitioner actually participated in the Eritrea operation. With regard to the World Bank Development Marketplace Information Session in which the petitioner participated on April 10, 2003 and the Eritrea operation, these events occurred subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, the petitioner's field is not in the arts. The plain language of this regulatory criterion indicates that it applies to

visual artists (such as sculptors and painters) rather than to agricultural or environmental consultants. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

In light of the above, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The petitioner submitted 1993 correspondence from Associates in Rural Development (ARD), Inc., Cargill Technical Services Limited, Abt Associates Inc., and Development Assistance Corporation thanking the petitioner for sending his resume and indicating that they would include him in their professional rosters. The petitioner also submitted a June 30, 1998 letter thanking the petitioner for "expressing interest in consulting opportunities with Development Alternative, Inc." and an October 24, 2001 letter from ARD, Inc. thanking the petitioner for submitting his "updated curriculum vitae" and stating that he was "already a member of ARD's professional roster." The petitioner's documentation also included an October 31, 2001 "Consultant Representation Agreement" giving ARD, Inc. "permission to propose [him] as a candidate for positions in [his] area of expertise within the context of proposals, projects, or assignments which are made available to ARD, Inc., through its clients." While the preceding documentation indicates that the petitioner sought employment in his field shortly after his graduation from the University of Minnesota in the early 1990s, that he later applied for employment with Development Alternative, Inc. in 1998, and that he then re-applied with ARD, Inc. in 2001, there is no evidence showing that the preceding consulting companies subsequently offered the petitioner employment or consulting assignments. Rather, the evidence of record indicates that the petitioner was employed by Georgetown University during the five years immediately preceding the petition's filing date working in an undisclosed occupation. As such, there is no clear evidence that the petitioner will continue work in his area of expertise in the United States.

Review of the record does not establish that the petitioner has distinguished himself 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. Nor is there clear evidence that the petitioner will continue work in the United States in his area of expertise. 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.