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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

PUBLIC COPY

[redacted]

File: WAC 01 257 62692 Office: California Service Center Date: MAY 16 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

IN BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

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

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

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 pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was working as the Director of Research at Skolar, Inc., an internet start-up company owned by Stanford University that provides online medical information through a system which also facilitates continuing education for physicians. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

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

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.
> > >
> > > (ii) Physicians working in shortage areas or veterans facilities.

The petitioner holds a Ph.D. in Mechanical Engineering and a M.S. in Computer Science from Stanford University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the

number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6.

Counsel describes the petitioner as a "highly skilled computer scientist... in the field of computer science and medical informatics development."

Along with documentation pertaining to his field of research, the petitioner initially submitted five witness letters.

Dr [redacted] Professor of Medicine and Mechanical Engineering at Stanford University, states:

[The petitioner] is the principal architect of a major new health care web portal that originated at the Stanford University Medical Center.

* * *

I first became aware of [the petitioner] in 1997 as a part of his involvement with what was then called the "SHINE Project" (Stanford Health Information Network for Education). It is worth explaining briefly that SHINE is a major new health care portal on the web, the brainchild of Professor [redacted] SHINE emerged in the late 1990's as a remarkably powerful tool for health care providers and patients to navigate medical information on the Web. Because of its clear potential for major impact, the effort was commercialized in a unique university-owned start up named Skolar. The Skolar system is rapidly gaining a foothold in this country and internationally as a dominant health care information portal.

[The petitioner's] role in the development SHINE/Skolar was pivotal. He began work on the project as a graduate student in computer science and rapidly established himself as a principal designer of the system. As the program has evolved and Skolar has been commercialized [the petitioner] has taken a leadership role and is currently supervising a group of thirty engineers and student employees.

[The petitioner] has the deepest technical understanding of the system of anyone on the team; he has a strong vision of the skills and ability of the system and its application into other areas and he has the intellect and the ambition to expand these activities into continually broader areas.

[The petitioner] is regarded in the biocomputation/health informatics community as one of the emerging stars. He is in a critical position to positively influence the development of health care informatics in this country. His native intelligence, his training, and work ethic will continue to push him to the top of the field.

Dr. [redacted] Dev, Director of Stanford University Medical Media and Information Technologies at the School of Medicine, states that the petitioner constructed "one of the most innovative query and retrieval systems for medical literature."

Dr [redacted] Chief Medical Officer of Skolar, Inc. and former Professor of Medicine and Molecular Pharmacology at Stanford University, states:

I decided to devote 100% of my career to development of a tool that could aggregate medical resources and treat them from a search point of view as a single entity. I asked [the petitioner] to join me at this point (1994) as the only doctoral student in the program. I suggested that he work for a Ph.D. degree in mechanical engineering and computer sciences and asked Dr. [redacted] of the engineering department to share his mentorship...

Eventually we developed a system that within 12 seconds of entry of a query, allowed the physician to commence study of his/her question and answer most of the patient provoked questions within 2-4 minutes, i.e., in the time frame where the answer could be used in real time for better outcomes than have been produced without the aid of use of such data.

* * *

The project was at first called SHINE (Stanford Health Information Network for Education) and was introduced for use in Stanford two years after [the petitioner] and I began working together. [The petitioner] is the principal designer of this innovative program that Stanford University has chosen to brand as its first University owned spin-off of its intellectual development. The product has been in Stanford's service for almost 4 years now... [The petitioner] easily earned his Ph.D. in Computer Science for the work that he did on this program and is now [employed by] Stanford Skolar.

* * *

For a moment, let me list the strongest accomplishments that [the petitioner] made to the program over the years. These included but were not limited to:

- Integrating SHINE's distributed heterogeneous medical information systems using an object-oriented broker-based three-tiered approach.
- Design and implementing SHINE's Electronic notebook, and online logging system, which are crucial to management of medical knowledge.
- Leading the project of XML-based document management system, which is important for the medical organizations to manage their local content using Skolar.
- Leading Oracle iFS-based electronic notebook project.
- Supervising and supporting research programmers.

* * *

Within the first two years of his work with me, he wrote and presented three papers to local and national meetings and by year two he was finding his scientific submissions being accepted to plenary sessions of basic computer science meetings. By the time he completed his Ph.D. in 1999 he had completed ten papers and delivered five papers... It is fair to say that despite the popular use of Shine at Stanford and the early though highly acceptable use patterns of Skolar in the U.S. (Harvard, primary care physicians contacted by Shering Plough, primary care physicians in Hong Kong, Malaysia, Korea, and the very positive feedback that Skolar has received from British Telecom, Agilent, [redacted] and the U.S. Veterans Administration) the product's life is in its earliest stages.

Early results of the use of the tool as an aid in decision making show that while tested at Stanford, Shine-Skolar was used by about 1700 people, they rarely criticized its function, found that about 80% + of their questions could be answered in acceptable time frames, and

have continued to use the machine in acceptable numbers to justify its wider distribution.

The petitioner may have benefited the SHINE/Skolar projects undertaken at Stanford, but his ability to impact the field beyond his employer's projects has not been demonstrated. The development of an online information system for a given employer is of interest mainly to that particular employer. We note here that numerous institutions provide online information services to their users. The petitioner has not shown that his work on the SHINE/Skolar projects significantly distinguishes him from other competent computer scientists engaged in the development of web-based information services.

The record contains promotional materials and press releases issued by Stanford, but these articles do not show that the information systems designed by the petitioner are viewed throughout the medical field or among computer scientists as particularly significant achievements. A 1999 article entitled "Physicians enlist computers in patient care" appearing in an unknown publication discusses Stanford's SHINE project, but names only Dr [redacted] The article states:

> A small but growing movement to incorporate computer technology into critical care could revitalize - or threaten - the doctor-patient relationship... A physician's and patient's questions about diseases and medications could be answered immediately, while the patient is still in the office. That's the goal pursued by physicians at Stanford University with SHINE. In time, the database may expand. The project is one of a number of efforts to incorporate computer technology into patient care...

The above article portrays SHINE as a work in progress rather than a significant achievement in medical or computer science. Furthermore, the article offers no comparison that portrays the petitioner's work as more significant than that of other "efforts to incorporate computer technology into patient care."

A second article appearing in what appears to be a newsletter issued by the Association of American Medical Colleges devotes only five sentences to the SHINE project. Also included in the same section of that newsletter are other brief summaries about computer advancements at schools such as the Tufts University School of Medicine and the University of Arkansas College of Medicine. One of these articles describes the Tufts Health Sciences Database as "an incredibly powerful and dynamic, multi-faceted, web-based curriculum resource that can support and enhance every phase of medical education from students to practicing physicians." The petitioner offers no evidence demonstrating that the online system that he developed is superior to those offered by other major universities or business institutions.

We note the absence of computer/medical journal articles about the petitioner's work that are authored by individuals who are not directly involved with Stanford University or the SHINE/Skolar projects. The fact that the petitioner has contributed to the development of Stanford's medical information systems carries little weight. Of far greater value in this proceeding is the importance to the larger field of the petitioner's work. The petitioner must show not only that his findings are important to his own research group at Stanford and the companies with which he directly collaborates (such as Oracle and IBM), but throughout the greater medical/computer science field.

Dr [redacted] asserts that the Skolar system has achieved "highly acceptable use patterns" from institutions such as Harvard and has garnered "very positive feedback from British Telecom, Agilent, Hewlett Packard, Pfizer, and the U.S. Veterans Administration," but he offers no documentary evidence to support his claims.

The letter from Dr. [redacted] Professor of Mechanical Engineering and Design at Stanford University, quotes at length from the assessment offered by Dr [redacted] Dr. [redacted] the petitioner's engineering research advisor at Stanford, states that the petitioner "augmented his mechanical engineering major with extensive computer science coursework and proved to be very adept at designing and implementing multi-perspective database search strategies." We note, however, that any objective qualifications that are necessary for the performance of a research position can easily be articulated in an application for alien labor certification. Pursuant to *Matter of New York State Dept. of Transportation, supra*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification.

Dr [redacted] concludes his letter by ranking the petitioner "amongst the top 20% of the Ph.D. candidates" that he has supervised. University study, however, is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner's scholastic achievement may place him among the top students at a particular educational institution, but it offers no meaningful comparison between the petitioner and experienced professionals in the computer science/medical informatics field who have long since completed their educational training.

The letters from Drs [redacted] and Rindfleisch cite the petitioner's published articles and conference presentations as evidence of his significant contributions. For example, Dr. [redacted] Chief Technology Officer and Vice President of Research and Development at Skolar, Inc., credits the petitioner with publishing and presenting "several important papers on his work in prestigious scientific conferences." The record, however, contains no evidence that the publication or presentation of one's work is a rarity in the petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's findings in their research.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment."

Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as

evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the petitioner's work.

The petitioner submitted four published articles citing his work. All of the citations provided, however, were self-citations by the petitioner's collaborators at Stanford. Self-citation is a normal, expected practice. Self-citation, however, fails to demonstrate the response of independent researchers. The documentation provided, therefore, falls well short of indicating an unusual level of interest throughout the field. While heavy independent citation of the petitioner's published articles would carry considerable weight, the petitioner has not presented such citations here.

The initial witness letters provided generally describe the petitioner's work rather than offer a valuation of its overall significance to the field. Other than letters from the petitioner's collaborators on the SHINE/Skolar project, the petitioner has provided no evidence to show that the larger "biocomputation/health informatics community" views the petitioner's work as particularly significant.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted copies of documentation previously submitted and two additional witness letters.

Dr. [redacted] Research Staff Member, IBM Almaden Research Center, states that he collaborated with the petitioner on a supermarket data mining project involving Stanford's Computer Science Department in 1997. Dr. [redacted] notes the petitioner's strength in technical implementation and innovative research for Stanford's medical informatics program. He also notes that the petitioner "completed the training of IBM Websphere Application Server and the Oracle database administrator's master programs." That the petitioner completed certain educational training does not differentiate him from others with those same credentials, nor does it establish that such credentials cannot be a valid job requirement on a labor certification.

[redacted] Senior Project Manager, Server Technologies, Oracle Corporation, states that the petitioner has been working closely with him since 1999 as a "technical and research contact." He further states:

> SHINE's system is far more advanced in many areas including integrated information systems, concept-based searching, knowledge management, and continuing medical education – than any of the other medical systems I am familiar with. Its superiority in research and technology was the main reason I decided to help SHINE with Oracle technologies.

[redacted] also states that the petitioner's "integrated system architecture, which was developed at Stanford University Medical School, can also be deployed in areas outside of the medical realm." With regard to the witnesses of record, several of them discuss what may, might, or could one day result from the petitioner's ongoing work, rather than how the petitioner's past efforts have already had a discernable impact beyond the original contributions that are expected of a

competent computer scientist or a doctoral student at a respected university. Statements pertaining to the expectation of future results rather than a past record of demonstrable achievement fail to demonstrate eligibility for a national interest waiver. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director acknowledged the intrinsic merit and national scope of the petitioner's work, but found that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director indicated that the witness letters failed to "show that the petitioner's work has gained significant notice in the field among individuals who have not directly worked with the petitioner."

On appeal, counsel argues that the director considered the evidence under the standard for aliens of extraordinary ability and therefore applied an incorrect standard in determining the petitioner's eligibility. We agree with counsel that the director's decision contains several erroneous references to the criteria for aliens of extraordinary ability under section 203(b)(1)(A) of the Act. For example, page three includes a discussion of the lack of national or international prizes and participation as a judge. Prizes and judging experience, however, are not required for the classification sought by the petitioner. At the bottom of page four the director asserts that citations of one's work is not evidence of national or international acclaim, a standard not required for the instant classification. Erroneous references to the "regulatory criteria" and national or international acclaim appear several times in the first nine pages of the director's decision. By discussing the lack of evidence regarding national or international acclaim, the director erred in the initial portion of his analysis. Therefore, we withdraw the director's initial findings pertaining to the regulatory criteria for the extraordinary ability classification.

The director's decision subsequently goes on to discuss the evidence under the correct standard and even states that national acclaim is not required for the classification sought. While we concur with counsel that the director's decision contains flawed statements, we find that the decision is not so flawed as to undermine the grounds for denial. The Bureau 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 the Service 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).

Counsel cites the witness letters attesting to the petitioner's impact on his field. As noted by the director, the petitioner's witnesses consist entirely of individuals having direct ties to the petitioner. Their letters describe the petitioner's expertise and value to his Stanford research projects, but they fail to demonstrate the petitioner's influence on the field beyond his work for that institution. While letters from those close to the petitioner certainly have value, the letters do not show that the petitioner's

work is attracting attention on its own merits, as we might expect with research findings that are especially significant. Independent evidence that would have existed whether or not this petition was filed, such as heavy independent citation of one's published findings, would be more persuasive than the subjective statements from individuals selected by the petitioner. In this case, the petitioner's findings may have added to the general pool of knowledge, but it has not been shown that researchers without direct ties to his Stanford's research projects have viewed the petitioner's findings as particularly significant.

Counsel states that the director's requirement that the petitioner's work be recognized outside of his collaborators imposes an excessive standard. However, pursuant to *Matter of New York State Dept. of Transportation*, *supra*, a petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. While we agree with counsel that the petitioner's collaborators are best able to provide "good insight" into the petitioner's work, such individuals, by virtue of their proximity to the petitioner's work, are not in the best position to attest to the petitioner's influence on the greater field. It remains, that very often, the petitioner's projects are also the projects of the witnesses, and no individual is likely to view his or her own work as unimportant. The director's observation that all 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 the letters accompanying the petition were from "experts in the field." Still, these individuals became aware of the petitioner's work because of their close contact with the petitioner; their statements do not show, however, that the petitioner's work has had a significant impact beyond Stanford University.

Counsel states that the petitioner's articles were "excitedly received and hailed by his peers" and that they reflect a "significant contribution" to his industry. The assertions of counsel, however, do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.)* attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research. In this case, the petitioner has offered only self-citations from his research group at Stanford rather than documentation demonstrating heavy independent citation of his published work.

Counsel states that the petitioner's work "has resulted in two patents," but the record contains no evidence to support this assertion. The record contains only documentation pertaining to patent applications. We note here that anyone may file a patent application with the United States Patent and Trademark Office ("USPTO"), regardless of whether the invention constitutes a significant contribution. The petitioner in this case has not shown that he was listed as the inventor on any approved patents at the time of the petition's filing. *See Matter of Katigbak, supra.* Even if the petitioner were to provide such evidence, an approved patent would not in and of itself establish the importance of the invention. Of far greater significance in this proceeding is the importance to the field of the petitioner's innovation. The granting of a U.S. patent documents that an innovation is original, but not every patented invention constitutes a significant contribution to one's field. According to statistics released by the United States Patent and Trademark Office, which are available on its website at *www.uspto.gov*, the USPTO has approved over one hundred thousand patents per year since 1991. In 2001, for example, it received 345,732 applications and granted 183,975 patents. The petitioner in this case has offered no evidence showing that his innovations have been viewed as particularly significant among independent researchers throughout the computer science or medical informatics fields.

In sum, the available evidence does not persuasively establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on the national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely 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.