

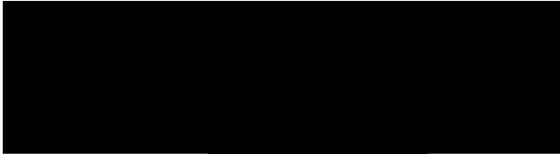
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

C,



FILE:

WAC 06 269 54446

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 23 2008**

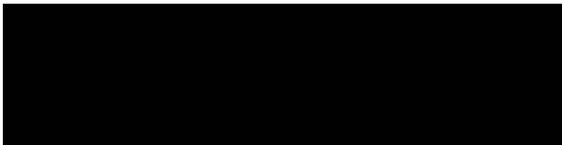
IN RE:

Petitioner:  
Beneficiary:



PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



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.

*fr* *Anna Deadrak*  
Robert P. Wiemann, Chief  
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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as its children's and youth ministry director. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization or that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel states that the petitioner submitted sufficient documentation to establish its eligibility for tax-exempt status, which was granted to the organization subsequent to the filing of the visa petition.<sup>1</sup> Counsel also states that the petitioner submitted sufficient evidence to establish that it employed the beneficiary for two years immediately preceding the filing of the visa petition. Counsel submits a brief and additional documentation in support of the appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

---

<sup>1</sup> Different counsel represents the petitioner on appeal. Previous counsel will be referred to as "former counsel" in this decision.

The first issue on appeal is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

In a September 1, 2006 letter accompanying the petition, former counsel asserted that the petitioner “meets the requirements of IRC § 501(c)(3), and as such, is not required to file Form 1023 with the IRS. Therefore, even though the Church is deemed to be tax exempt, it has not, nor will it ever, receive a determination letter on its tax exempt status from the IRS.”

Under Internal Revenue Service (IRS) regulations, churches that meet the requirements of section 501(c)(3) of the Internal Revenue Code (IRC) are automatically considered tax exempt and are not required to obtain recognition of its tax-exempt status from the IRS. Nonetheless, for the purpose of this visa petition, the petitioner must provide documentation to Citizenship and Immigration Services (CIS) to establish its tax-exempt status. The petitioner can do this pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine it is a tax-exempt religious organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for Citizenship and Immigration Services (CIS), *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the “minimum” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for

the petitioner to submit the documents listed above. The content of those documents must establish the religious purpose of the organization.

Former counsel asserted that “in Florida an organization must be exempt from federal income tax under IRC § 501(c)(3) and hold a consumer’s certificate of exemption issued by the Florida Department of Revenue to qualify as tax exempt under Florida Law.” With the petition, the petitioner submitted a copy of a State of Florida Department of Revenue Consumer’s Certificate of Exemption, exempting it from the payment of Florida sales and use taxes; a copy of its articles of incorporation indicating that, although it was established to organize a church, did not contain the dissolution clause required by the IRS; a copy of a January 5, 2000 Form SS-4, Application for Employer Identification Number; flyers about the organization; and photographs that the petitioner stated are of the church building and church events.

In a request for evidence (RFE) dated December 11, 2006, the director instructed the petitioner to provide, among other things, evidence that it qualifies as a nonprofit religious organization, and quoted the provisions of the regulation at 8 C.F.R. § 204.5(m)(3)(i) above. In a March 5, 2007 letter responding to the RFE, former counsel stated that all of the requested evidence, with the exception of the petitioner’s 2006 Not for Profit Corporation Annual Report, its U.S. Corporation Income Tax Return, and the beneficiary’s federal tax return for 2006, had been submitted with the petition. Former counsel stated that the missing documentation would be submitted as soon as they were filed.

On June 1, 2007, the director issued the petitioner a notice of intent to deny (NOID) in which she notified the petitioner that the evidence submitted did not establish that it was eligible for tax-exempt status. In response, the petitioner submitted an undated and unsigned copy of an IRS Form 1023, Application for Recognition of Exception Under Section 501(c)(3) of the Internal Revenue Code, a copy of its amended articles of incorporation that included the dissolution clause required by the IRS, and a copy of its bylaws.

The director determined that the petitioner had failed to establish that it was exempt from taxation under section 501(c)(3) of the IRC or that it was eligible for such an exemption. The director based her determination on the fact that the documentation did not indicate that the IRS Form 1023, with its accompanying documentation, had been filed with the IRS.

The regulation does not require that the petitioner receive official recognition of its tax-exempt status from the IRS. As the regulation and the Yates memorandum make clear, to establish that it is eligible for tax-exempt status, the petitioner must only submit to CIS the documentation required by the IRS to determine its eligibility for tax exemption. The petitioner submitted all of the documentation outlined by the regulation at 8 C.F.R. § 204.5(m)(3)(i)(B) and clarified in the Yates memorandum. Accordingly, the petitioner submitted sufficient evidence to establish that it was eligible for tax-exempt status under section 501(c)(3) of the IRC. On appeal, the petitioner submits a copy of an August 1, 2007 letter from the IRS granting it tax-exempt status under sections 501(c)(3) and 170(b)(1)(A)(i).

Therefore, the petitioner has established that it is a bona fide nonprofit religious organization.

The second issue presented on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section

101(a)(27)(C) special immigrant religious worker.” The regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on September 8, 2006. Therefore, the petitioner must establish that the beneficiary was continuously working in qualifying religious work throughout the two-year period immediately preceding that date.

In its September 1, 2006 letter accompanying the petition, the petitioner stated that the beneficiary had been working in the proffered position since 1998. The petitioner stated that in the proffered position, the beneficiary’s duties will consist of:

- Establishing goals of the children’s and youth religious education program based on PHC’s sacred mission and doctrinal objectives;
- Developing ways to encourage program participation;
- Selecting appropriate curricula consistent with PHC’s religious philosophy;
- Leading Sunday school lessons and children’s and youth group meetings;
- Planning and organizing special events such as plays, music recitals, special presentations, summer bible school, and field trips;
- Providing counseling to the children and youth and their parents in biblical parenting;
- Participating in personal evangelism and outreach ministries to the needy.

The petitioner stated that the beneficiary would be compensated at the rate of \$16,000 per year, but did not state the compensation that the beneficiary had received for her services in the past. However, the petitioner submitted copies of IRS Forms 1099-MISC, Miscellaneous Income, indicating that it paid the beneficiary \$16,000 in 2003 and 2004, and copies of the beneficiary’s IRS Form 1040, U.S. Individual Income Tax Return, for the years 2003, 2004 and 2005, reporting self-employment income of \$16,000. All of the tax returns are dated June 1, 2006 and contain no indication that they had been filed with the IRS.

In her RFE, the director instructed the petitioner to:

Provide evidence of the beneficiary’s work history for the years 2004, 2005 and 2006. Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer’s name, specific dates of employment, specific job duties, number of hours

worked per week, form and amount of compensation, and level of responsibility/supervision. In addition submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself [sic] during the two-year period or what other activity the beneficiary was involved in that would show support.

The director also instructed the petitioner to submit copies of the beneficiary's IRS Forms 1040 for 2004, 2005 and, if available, 2006; copies of the beneficiary's IRS Forms W-2 for the same period; and copies of her three most recent pay stubs. As discussed previously, in response, counsel stated that the petitioner had provided all of the requested documentation with the exception of the 2006 tax documentation, and that the missing documentation would be submitted when it was filed.

In her June 1, 2007 NOID, the director questioned the authenticity of the beneficiary's federal tax returns, as they were all signed on June 1, 2006. The director requested the petitioner to provide certified copies of the beneficiary's tax returns with their corresponding "W-2's" for the years 2005 and 2006.

In response, the petitioner submitted copies of checks that it had made payable to the beneficiary dated from June 2006 through May 2007. Most of the checks are in the amount of \$1,500 and indicate that they are for salary. However, only three of the checks are within the qualifying period of September 8, 2004 to September 8, 2006. The petitioner also resubmitted a copy of the IRS Form 1099-MISC that it issued to the beneficiary in 2004 but did not submit copies of the form for 2005 or 2006. Additionally, the petitioner resubmitted copies of the beneficiary's income tax returns for 2004 and 2005 and a file copy of her tax return for the year 2006. The IRS Form 1040 for 2006 indicates that it was prepared on June 28, 2007. Additionally, the petitioner submitted a copy of the beneficiary's tax return transcript from the IRS for the year 2005.

Former counsel asserted in her June 29, 2007 letter accompanying the petition, that the beneficiary "was unaware that she was required to file Federal income tax returns" and that after consultation with counsel, "filed her back taxes for 2003, 2004, and 2005 all at once." The petitioner provided a certified copy of the beneficiary's 2005 return. Counsel stated that as the beneficiary filed her 2006 taxes on June 28, 2007, she could not provide a certified copy of her 2006 return because it would not yet be reflected in the IRS system. As of the date of this decision, the petitioner has not submitted a certified copy of the beneficiary's 2006 tax return. The petitioner provided no explanation as to why a certified copy of the beneficiary's tax return was not provided for the year 2004.

The director determined that the petitioner had failed to establish that the beneficiary worked continuously in the proffered position for two full years preceding the filing of the visa petition, noting that she allegedly worked without employment authorization and failed to file federal income tax returns.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." *See* H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to

perform duties for a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years immediately preceding the time of application. The term “continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term “continuously” also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, counsel asserts:

The petitioner provided sufficient evidence to show that the beneficiary was employed by the petitioning organization for two years immediately preceding the filing of the petition. The financial information submitted established that the beneficiary has been employed by the petitioning organization from September 8, 200[4] until September 8, 2006. The cancelled pay checks showed employment from at least June 2006 September 2006 and after. The IRS tax transcript for year 2005 showed employment throughout the year 2005 and finally, the IRS tax transcript for year 2005 showed that the beneficiary filed her 2004 income tax return with IRS, as evidence by the payments in the amount of \$14,869.00 showing on line “Form 8812 prior year earned income credit,” and therefore purports to shows [sic] employment with the petitioning organization throughout the year 2004. Furthermore, the petitioner provided her income tax return for year 2006, which even though late filed with IRS, is probative of beneficiary’s employment for the early part of year 2006.

Counsel’s arguments are not supported by the evidence of record. First, while the beneficiary’s 2005 tax transcript from the IRS shows that the beneficiary filed a return indicating that she received \$16,000 in non-employee income in 2005, the transcript does not establish that she worked throughout the year and was paid by the petitioner. Second, counsel admits that the 2005 transcript only “purports to show” that the beneficiary filed her 2004 return with the IRS. The petitioner failed to provide certified transcripts from the IRS to show that the beneficiary actually filed her returns as stated even though requested to do so by the director. This failure to provide the requested documents raises questions as to whether the returns were actually filed. Further, the petitioner failed to provide copies of the Forms 1099-MISC that it allegedly issued to the beneficiary in 2005 and 2006, although again specifically requested to do by the director.

We note that the petitioner provided a copy of its 2005 IRS Form 1120-A, U.S. Corporation Short-Form Income Tax Return, dated August 31, 2006, and copies of its unaudited financial statements for 2003, 2004, and 2005. The financial statement for 2005 indicates that the petitioner may have charged the beneficiary's compensation as cost of sales and reported it as such on the IRS Form 1120-A. However, there is no evidence that the petitioner made similar charges on its 2003 and 2004 financial statements. In its response to the NOID, the petitioner stated that it is not required to file IRS Form W-3, Transmittal of Wage and Tax Statements, because it issues IRS Forms 1099-MISC to its employees and not IRS Forms W-2. However, the petitioner provided no evidence that it filed an IRS Form 1096, Annual Summary and Transmittal of U.S. Information Returns, to report the Forms 1099-MISC issued to nonemployees. The petitioner therefore has not submitted sufficient evidence to establish that the beneficiary was paid for her services throughout the qualifying period.

In her NOID, the director also notified the petitioner that a discrepancy existed in the record regarding the beneficiary's work history. The petitioner stated that the beneficiary had worked in the proffered position since 1998. The director noted, however, that on May 16, 2001, the petitioner had filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on behalf of the beneficiary and alleged that the proffered position was that of children's minister. The director determined that the duties of the two positions differed, and therefore the beneficiary could not have worked in the same occupation since 1998.

Pursuant to section 203(b)(4) of the Act and 8 C.F.R. § 204.5(m)(1), the beneficiary must have two years continuous experience in the occupation for which he or she is seeking entry into the United States.

In response to the NOID, the petitioner provided the following detailed list of the beneficiary's weekly activities:

### SUNDAY

#### Providing Sunday School Lessons to the children

9:00 a.m.	Arrival
9:00 to 9:15 a.m.	Participate in a prayer meeting with volunteers and teachers
9:15 to 10:00 a.m.	Get classes ready to start, supervising and helping volunteers and teachers with their lessons.
10:00 to 10:30 a.m.	Participate in the worship service with the whole congregation.
10:30 to 10:45 a.m.	Take children 0 to 12 years old to the Classroom Building. Greeting the children with love and enthusiasm and lead them to the specific classrooms, according to their ages. Make sure the volunteer teachers are ready to give the Sunday School lessons.
10:45 to 11:00 a.m.	Introduce the Bible topic and ice-breaking activities.
11:00 to 11:30 a.m.	Teach the Bible lesson in English <u>and</u> in Portuguese.
11:30 to 12:00 p.m.	Supervise the children during the snack and bathroom time.
12:00 to 12:30 p.m.	Review the lesson, have them memorize the verse of the day, supervise the children in the tidying of their material and make sure the other teachers are ready to finish the class.
12:30 p.m.	Dismissal of the children.

- 12:30 to 1:30 p.m. Meetings with parents to discuss miscellaneous topics regarding the children, counseling to parents, counseling to children, according to needs.
- 1:30 to 2:30 p.m. Neaten the Classroom Building and have a short meeting with the volunteer teachers to evaluate the day.

MONDAY

Day off.

TUESDAY

Plan and organize Bible Lessons for Sunday. (work from home)

- 9:00 to 10:00 a.m. Read and analyze the curriculum (Groups Publishing), take notes.
- 10:00 to 1:00 a.m. Read the Bible story, follow the curriculum steps, translate the material to Portuguese (for the volunteers), prepare the classes, both in English and Portuguese, for each age group.
- 1:00 to 3:00 a.m. [sic] Available to visit local Christian stores, do online and children's books reach to improve the variety of material available for the Ministry.

WEDNESDAY

(Work from home)

- 9:00 to 11:00 a.m. Make a list and shop for supplies for Sunday classes.
- 11:00 to 1:00 p.m. Plan and prepare the mid-week class for the service on Thursday evening.
- 1:00 to 3:00 p.m. Plan and prepare special activities for the children for some Fridays or Saturdays throughout the year, such [as] field trips, children's services, fund days, etc.

THURSDAY

(Work from home in the morning)

- 9:00 to 10:00 a.m. Make sure the mid-week class is ready for the service in the evening.
- 10:00 to 12:00 p.m. Make conference calls with teachers and parents, as needed.
- 7:30 to 8:00 p.m. Short conference with volunteer teachers regarding the mid-week class.
- 8:00 to 9:30 p.m. Alternate between attending the service and supervising the mid-week classes

FRIDAY

(Work from home)

9:00 to 11:30 a.m. Read the Bible, plan and prepare the youth service for Saturday night, age group: 13 to 16 years old.  
11:30 to 12:30 p.m. Make a list and shop for supplies for the youth service.  
12:30 to 1:30 p.m. Make phone calls to the youth parents to discuss miscellaneous topics regarding their children.

Every other Saturday at the church

5:00 to 10:00 p.m. Youth Service: Preach a sermon, discuss the topic of the day, the Bible story, watch a Christian movie, play a game or icebreaker. Take the group to a local fast food restaurant or prepare a dinner with them at the church.

Former counsel also asserted that the change in job title for the beneficiary “was the result of assessment of the beneficiary’s job duties, and that the position has not changed.” The petitioner provided a copy of the job description for the Department of Labor’s O\*Net Code 21-2021.00 for Directors, Religious Education, which it states more closely approximates the job performed by the beneficiary.

In her decision denying the petition, the director noted that in its previous petition, the petitioner stated that the beneficiary would work as a children’s minister and that the position of minister normally requires ordination or a license. However, the petitioner indicated that the current job offer does not require ordination, and the director, therefore concluded that the beneficiary’s “position and duties must have changed during the course of the beneficiary’s employment with the petitioner.” The director thus determined that the petitioner had not established that the beneficiary had been employed in the same position as the proffered position for the two full years immediately preceding the filing of the petition.

In its 2001 petition, the petitioner stated that it sought “a qualified minister and religious worker” and that it was offering the beneficiary the position of children’s minister. The petitioner indicated that the duties of that position would include:

- Leading the Children’s Group Ministry
- Leading the Sunday School Ministry
- Leading the children in activities such as, plays, music recitals, and special presentations
- Organizing field trips and special activities for the children
- Teaching Sunday School classes
- Coordinating summer bible camps and special activities for holidays
- Participating in Personal Evangelism Activities
- Providing charitable services to the needy in our community
- Providing counseling to the children and parents in biblical parenting

In response to the NOID, former counsel asserted that the petitioner merely changed the title of the job position to have it more closely aligned with the responsibilities of the position. Former counsel compared the duties of the current job offer to those of the 2001 offer, and noted the similarities despite the difference in the wording.

The petitioner did not indicate when it changed the job title. We note that in 2001, the petitioner stated that it sought a qualified minister and religious worker. It is not clear whether the duties of the position required the services of an ordained minister. Additionally, while the petitioner stated that the current job offer does not require the services of an ordained minister, according to the petitioner, the beneficiary preaches a sermon to the youth apparently twice a month. Upon review, we find that the duties of the proffered position contain sufficient similarities to the duties of the 2001 job offer. However, as the petitioner has not established that the beneficiary was compensated for her services, it has failed to establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.