

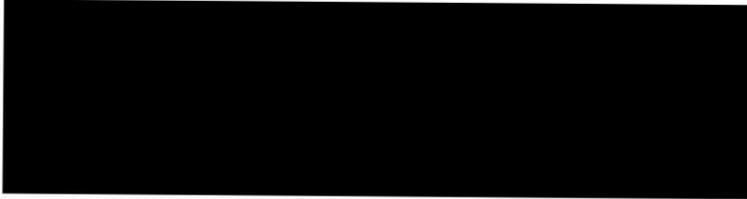
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

b1

PUBLIC COPY

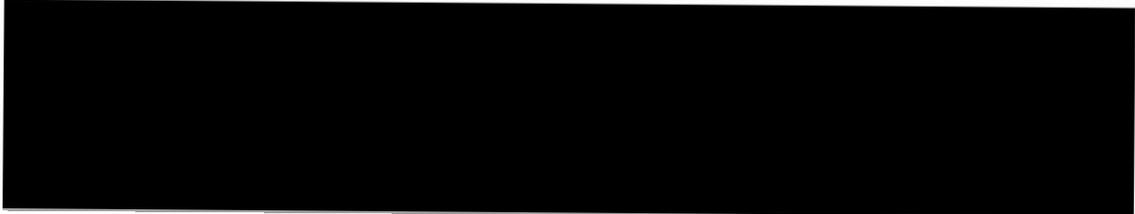


FILE: WAC 04 055 51700 Office: CALIFORNIA SERVICE CENTER Date: **MAR 22 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

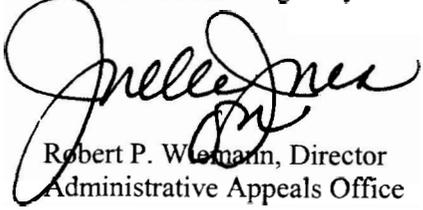
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.


Robert P. Wismann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a rug and carpet wholesaler and retailer with ten employees that seeks to employ the beneficiary as a management analyst. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. In his denial, the director cited two reasons for his arrival at this conclusion. First, the director found that while some of the duties of the proposed position mirror those of typical management analysts, the majority of the duties are not those of management analysts, and do not require a degree for their performance. Second, the director found that the petitioner's operations lack the scope or complexity to require the services of a management analyst and that its business was not of the type in which management analysts would normally be employed.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular

position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

The petitioner, a rug and carpet wholesaler with ten employees, was established in 2002. It proposes to hire the beneficiary as a management analyst. In its December 1, 2003 letter of support, the petitioner stated that it “is critical to perform a top to bottom review of the company’s operational and procedural functions in order to identify inefficiencies and eliminate waste.” To this end, the beneficiary would apply advanced analytical techniques to help make better management and operational decisions. Thus, the beneficiary would analyze the petitioner’s management so as to make effective use of money, services, and personnel. Specifically, the beneficiary would: review the company’s organizational and operational structure; develop appropriate business strategies and financial management solutions so as to maximize efficiency; define information needs and priorities; develop informational interfaces to improve the quality of decision-making; identify communication objectives and channels so as to improve the sharing of information and minimize duplicative efforts; define goals and strategies to improve the company’s utilization of resources so as to generate improved time and cost savings; analyze the petitioner’s business operation; monitor all aspects of the company’s operation in order to identify areas in need of improvement; formulate appropriate management methods and employee relation strategies that ensure optimization of the company’s goals; develop and implement cost effective operating procedures to cover all operational areas, including audit and labor utilization, work measurement standards, work flow structure, staffing, services, and equipment requirements; perform profit analyses to determine if margins are set at appropriate levels in comparison to the rest of the industry; determine which components of the business are functioning below par and which margins can be flexed; prepare operations reports highlighting current operational practices, labor costs, and activity records; monitor and act upon all critical activities; perform operations reconciliation in order to determine whether specific activities generate the proposed revenues, expenses, costs, and profits; compile data and prepare charts illustrating research results; determine and recommend methodological strategies to make the company’s services competitive with others in the marketplace; evaluate the company’s labor relations requirements and existing benefits and compensation policies and research prevailing practices among similarly-situated organizations; and research, monitor, and investigate changes, trends, and fluctuations in the employee benefits, insurance, investment, and labor relations markets to identify investment values and optimal employee benefit plan packages.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly

specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The 2006-2007 edition of the *Handbook* sets forth the following description of the duties of a management analyst:

Management analysts, often referred to as *management consultants* in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company that needs help improving the system of control over inventories and expenses may decide to employ a consultant who is an expert in just-in-time inventory management. In another case, a large company that has recently acquired a new division may hire management analysts to help reorganize the corporate structure and eliminate duplicate or nonessential jobs. In recent years, information technology and electronic commerce have proved new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem. During this phase, they analyze relevant data—which may include annual revenues, employment, or expenditures—and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem. While preparing their recommendations, they take into account the nature of the organization, the relationship it has with others in the industry, and its internal organization and culture. Insight into the problem often is gained by building and solving mathematical models.

Once they have decided on a course of action, consultants report their findings and recommendations to the client. These suggestions usually are submitted in writing, but oral presentations regarding findings also are common. For some projects, management analysts are retained to help implement the suggestions they have made.

With regard to management analysts seeking employment in the private sector, the *Handbook* states the following:

[M]ost employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field in which the worker plans to consult, in addition to a master's degree

Thus, management analyst positions normally qualify as specialty occupations under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

However, the *Handbook's* description of management analysts reveals important differences between that occupation and the position proposed here, and the AAO is not convinced that the beneficiary would

actually be working as a management analyst. Management analysts are typically hired for specific projects, the *Handbook* indicates, such as improving a small company's system for controlling inventory and expenses or reorganizing a large company's corporate structure after a merger. The petitioner's description of the proposed position, by comparison, is a list of vague and general duties that provides little information about what the beneficiary would actually be doing on a daily basis, the specific subject matters on which he would be working, or the specific types of recommendations he would be expected to produce. Furthermore, there are no specific examples of the types of data the beneficiary would be analyzing or the types of organizational studies and evaluations he would conduct, and none of her duties are described in the context of the petitioner's business. For example, stating that the beneficiary will review the company's organizational structure, develop appropriate business strategies, or define information needs provides the AAO with no information regarding the duties that the beneficiary would actually perform.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. A petitioner must do more than recite the duties of an occupational category; it must explain what the beneficiary will actually be doing in the position on a daily basis in relation to the petitioner's business. The petitioner must show that the performance demands of the position require a baccalaureate or higher degree in a specific specialty. The critical issue is not the employer's self-imposed standard, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in the specific specialty as a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

Based on the evidence of record, the AAO is not persuaded that the beneficiary would actually be performing the services of a management analyst, as that position is contemplated in the *Handbook*, in the proposed position, or that the performance demands of the position require a baccalaureate or higher degree in a specific specialty. Therefore, the AAO concludes that the position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because the record does not establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the position.

Counsel's reference to and assertions about the relevance of information from the *Dictionary of Occupational Titles (DOT)* and O*Net are not persuasive. Neither the *DOT's* specific vocational preparation (SVP) rating nor the O*Net's Job Zone categories indicate whether a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO has reviewed the job postings submitted by counsel. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

There is no evidence in the record to demonstrate that any of these companies are similar in size or scope of operations to the petitioner, a rug and carpet wholesaler and retailer with ten employees. No information is submitted regarding [REDACTED] or the unnamed company advertising its vacancy through [REDACTED]. The [REDACTED] is engaged in worldwide production and distribution of entertainment products, Bearing Point is an accounting firm, Independence Air was an airline company, Cendant Travel Distribution Services is primarily a provider of travel and residential real estate services, [REDACTED] is an information technology firm, and [REDACTED] is a venture capital investment firm. No documentation has been submitted to prove that the petitioner and any of these companies are “similar organizations.”

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of this criterion requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding.

The AAO finds that the proposed duties are portrayed in general terms that do not relate the duties to specifically described problems and tasks that would demonstrate that the proposed position resembles that of an actual management analyst, which is an occupation requiring a master’s degree in business administration or a related discipline. In addition, the proposed duties are not described in a manner that relates them to the petitioner’s actual business operations. By describing the duties in general terms, the petitioner has failed to show the proposed duties as complex or unique, requiring knowledge that is usually associated with the attainment of a master’s degree in business administration or a related discipline, which is the requirement for a management analyst in the private sector. Thus, the petitioner has not established the proposed position as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner’s ability to meet this criterion, the AAO normally reviews the petitioner’s past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas.

The record does not demonstrate, nor has the petitioner contended, that the position qualifies under this criterion. Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position’s duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. There is no evidence in the record to support such a finding. Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied.

The AAO does not agree, however, with the director's finding that the petitioner's type of business disqualifies it as an organization that would employ the services of a management analyst. The *Handbook's* discussion of the employment of management analysts indicates only that most private sector management analysts work in management, scientific, and technical consulting firms, in computer systems design and related services firms. It does not support a finding that management analysts may not be employed by other types of businesses, including a rug and carpet wholesaler and retailer, seeking to improve their operations or profits. Accordingly, the AAO withdraws the director's findings in this regard.

Beyond the decision of the director, the AAO has determined that, even if it were to hold that the position proposed here was actually that of a management analyst, the beneficiary would not qualify to perform its duties. For this additional reason, the petition may not be approved.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

As noted previously, the *Handbook* reports that a management analyst employed in the private sector is required to possess a master's degree. If a particular specialty occupation requires an educational attainment *higher* than that of a baccalaureate degree, then the beneficiary of the proposed position must possess that requisite higher education. Therefore, the petitioner must prove that the beneficiary possesses the equivalent of a master's degree.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary did not earn a degree from a United States institution of higher education, so he does not qualify under the first criterion.¹

¹ In her April 2, 2004 response to the director's request for evidence, counsel stated that the beneficiary earned "a

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. While the record indicates that the beneficiary earned a bachelor's degree in commerce and a master's degree in business management from Filipino institutions, evaluations of these degrees have not been submitted.² Therefore, the AAO is unable to determine whether these degrees are equivalent to a master's degree from an accredited United States institution of higher education.

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does not qualify under the third criterion, either.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is the fourth criterion under which the petitioner must classify the beneficiary's combination of education and work experience. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

USA Master's Degree in Business Management." However, the record contains no copy of a master's degree from a United States institution of higher education. As this was the only time such an assertion was made, and such a degree is not contained in the record, the AAO presumes that this was a typographical error.

² In its December 1, 2003 letter of support, the petitioner stated that it had obtained an evaluation of the beneficiary's foreign education credentials, and that the evaluation was "enclosed herein." In her April 2, 2004 response to the director's request for evidence, counsel also stated that the beneficiary's degrees were "equated and evaluated according to INS regulations and guidelines." However, the record contains no such evaluation. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as no evaluation has been submitted.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary is unqualified under this criterion because no evaluation has been submitted.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

The AAO next turns to the fifth criterion. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the alien must have a baccalaureate degree followed by at least five years of experience in the specialty in order to demonstrate equivalency to a master's degree. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation³;

³ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

There is no evidence in the record regarding the beneficiary's previous work experience. Therefore, the petitioner has not established that the beneficiary's previous work experience included the theoretical and practical application of a body of highly specialized knowledge, or that it was gained while working with peers, supervisors, or subordinates with degrees in the specialty, and that the beneficiary has achieved recognition of expertise in the field.

As such, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Thus, the beneficiary does not qualify to perform the duties of a specialty occupation.

The petitioner has not established that the proposed position qualifies for classification as a specialty occupation, nor has the petitioner established that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

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. The petition is denied.