

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY



U.S. Citizenship  
and Immigration  
Services

B2



FILE: [REDACTED]  
LIN 07 145 51764

Office: NEBRASKA SERVICE CENTER

Date: AUG 05 2009

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

*John F. Grissom*  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director reaffirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the performing arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. In reaching this conclusion, the director concludes that the petitioner meets one of the ten regulatory criteria, of which an alien must meet at least three.

On appeal, the petitioner submits a statement. For the reasons discussed below, the petitioner has not overcome the director’s original bases for denying the petition. Moreover, we find that the director’s conclusion that the petitioner meets the published materials criterion, which appears to be based on a document from Chinese Central Television (CCTV) rather than actual published material, is in error. Finally, we withdraw the implication in the director’s final decision that a high level professional rank issued by a local authority could constitute favorable evidence of sustained national or international acclaim.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Thus, while we do not lightly withdraw favorable findings by the director, the AAO is not bound by such findings.

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

At the outset, the AAO notes that the petitioner is currently in the United States as a P-3 nonimmigrant, a visa classification that requires the alien to perform as a performer or entertainer at an internationally recognized level of performance, and that the alien seek to enter the United States "temporarily and solely for the purpose of performing as such a performer or entertainer." *See* section 214(c)(4)(B) of the Act, 8 U.S.C. § 1184(c)(4)(B). The current record is devoid of any evidence to indicate that the petitioner is performing as a performer or entertainer at an internationally recognized level or that he is in the United States "temporarily and solely" for the purpose of performing as such a performer or entertainer.

While USCIS approved at least one P-3 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. at 597. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d at 1090.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between

a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

This petition seeks to classify the petitioner as an alien with extraordinary ability as a Peking Opera actor. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>1</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner submitted two Certificates "of Award" affirming the petitioner's participation in the Chinese Cultural Festival in New York in 2006 and performance of "the Spider Withes" with Les Ballets De L'Opera Chinois De New York.<sup>2</sup> The petitioner has never explained how recognition for performing is an "award" or "prize."

The petitioner submitted a 1998 "Encouraging Prize" from the Third Beijing Hong Xuefeng Youth Peking Opera Competition. The petitioner did not submit any information about this competition or how many of these prizes were issued in 1998.

The petitioner also submitted a 2001 "First Prize" from the China National Youth Peking Opera Competition bearing the seal of the Chinese Ministry of Culture. Information about the award indicates that the recipients were between the ages of 18 and 40. While the petitioner did not provide a complete translation in accordance with 8 C.F.R. § 103.2(b)(3), the foreign language materials about the competition suggest that at least 24 individuals also won this prize. The petitioner also submitted a certificate from CCTV certifying his "Excellent Performance Prize" at the 2001 Hayaoliu Cup. The materials about this competition indicate that the organizers issue best performance awards, excellent performance awards, on screen new star awards and organizing awards. While the translation uses the singular, the materials do not explicitly indicate how many of each award are issued.

The record also includes a 2005 "Silver Prize" at the 5<sup>th</sup> China National Peking Opera Artists Television Performance Competition. The materials for this event reveal that the competition was limited to those aged 16 through 36 and that 21 Silver Prizes were issued.

---

<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

<sup>2</sup> While the logo on the certificate correctly spells "L'Opera," the name of the company on the certificate itself is misspelled as "I'Opera."

The petitioner also submitted letters from Chinese Opera performers in China reaffirming that the petitioner won the abovementioned prizes but providing no other information about these competitions.

On March 5, 2008, the director requested evidence of the significance of the awards, including the reputation of the organizing entity and the criteria used to select the recipient. In response, the petitioner submits an unsigned document bearing CCTV's stamp. The document asserts that the CCTV's Fifth Session of Outstanding Young Actors Performance Contest was limited by age to 18 through 40 and that the competitors "were the most outstanding artists from Chinese various provinces, cities and theater troupes." The document further confirms that the petitioner participated in the contest, won the consistent praise of experts and ultimately won the silver award. As stated above, the official materials indicate that the age group for the same contest was actually 16 to 36 and that 21 silver awards were issued.

The director concluded that the petitioner had not established that his awards were nationally or internationally recognized. On motion, the petitioner notes that he submitted evidence regarding his Chinese awards. The director concluded that the petitioner had not submitted any new evidence relating to this criterion. On appeal, the petitioner reiterates his assertion that the initial evidence submitted is sufficient to meet this criterion.

The evidence submitted regarding the petitioner's awards and prizes does not establish that the prizes or awards are nationally or internationally recognized and, regarding the 2005 award, is inconsistent regarding the age group for this award. In general, awards issued at events limited by age or experience, and therefore not open to all members of the occupation, are not indicative of national or international acclaim.

As stated above, the Ministry of Culture issued at least 25 "first" place prizes in 2001. The record does not establish the number of "excellent performance" awards issued by CCTV at the 2001 Hayaoliu Cup. CCTV did, however, issue 21 "silver" awards in 2005. Based on the number of "awards" issued, we cannot consider these "awards" as qualifying nationally or internationally recognized awards or prizes, which typically do not award more than one first, one second and one third prize. Thus, while we acknowledge that the petitioner did submit evidence about his "awards," that evidence does not support a finding that the petitioner meets this criterion.

Even if we concluded that the petitioner meets this criterion, and we do not, the evidence falls far short of meeting any other criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner submitted his membership certificates for the Chinese Theater Association, an association with 12,700 members characterized in the materials submitted as “eminent playwrights, directors, actors, set designers, theater musicians, theorists, critics, theater educators, managers and administrators, etc.” The materials, while discussing the association’s role as a bridge between the government and the “numerous” artist members and in organizing prestigious competitions, does not address the association’s actual membership requirements. The petitioner also relies on his appointment as an artistic consultant for various entities, including the Peking Opera Association of Beijing Universities’ Students. The petitioner does not explain how these appointments constitute “memberships.”

Finally, the petitioner submitted his Class-2 Performer Intermediate Professional Rank certificate from Tianjin City’s Cultural Bureau. According to the materials submitted, promotions to middle and high ranks are awarded after a “rigorous examination and appraisal, recommended by each unit to bureau office leading group to check overall performance, and then refer the matter to adjudicator group.” (Grammar as it appears in the translation.) Those seeking a high rank must “exceed the standards for five years in succession.” Those reaching or exceeding “the standards” are qualified for continuous employment. Finally, rank appears to relate to a wage scale. The petitioner does not explain how his professional rank constitutes a “membership.”

The director requested evidence of the actual membership requirements for the above associations. In response, the petitioner asserts that he holds membership in “professional organizations in China and in the U.S., including [the] China Dramatists Association, which require outstanding achievements of their members, as judged by recognized national and international experts in Peking opera fields.” 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’l. Comm’r. 1972)). The petitioner submitted no new documentation relating to this criterion.

The director concluded that the petitioner had not demonstrated that the associations of which the petitioner may be a member require outstanding achievements. On motion, the petitioner does not address the membership criteria of the Chinese Theater Association or the China Dramatists Association. In his final decision, the director reconsidered the petitioner’s ranking, noted that it was only “intermediate,” and concluded that a higher ranking might support a later petition.

On appeal, the petitioner asserts that while his rank is only “intermediate,” it demonstrates his status as an excellent Peking opera artist. The petitioner notes that the director conceded that a higher rank requires five years of performance at a level that exceeds the relevant standards and that the petitioner was not in China five years after receiving his intermediate rank. The petitioner questions how the director can be sure that the petitioner would not have been promoted if he had been in China at the time he was eligible to seek a promotion and notes that a silver Olympic medal can demonstrate acclaim.

We find that the director's discussion of the petitioner's rank is not particularly helpful in determining whether the petitioner meets the membership criterion or even the petitioner's sustained national or international acclaim. The petitioner's speculation about a hypothetical promotion is equally irrelevant.

At issue for this criterion is whether the petitioner can demonstrate "membership" in an association that requires outstanding achievements. Thus, the evidence required under this criterion includes documentation of membership and the official membership requirements of the association of which the petitioner is a member.

The bare assertion in the Chinese Theater Association materials that its members are "eminent" is insufficient. Without the actual membership criteria, documented in official materials from the association, we cannot determine whether this membership can serve to meet this criterion.

The record lacks evidence of the petitioner's membership in the China Dramatists Association or its membership criteria. Thus, the petitioner has not established that this claimed membership is qualifying.

Moreover, appointments to provide consultation for various associations are not memberships and are better considered as to whether they might constitute a leading or critical role for a distinguished entity pursuant to 8 C.F.R. § 204.5(h)(3)(viii).

Similarly, the petitioner's professional rank is not a membership. In order to consider this rank "comparable evidence" to meet this criterion pursuant to 8 C.F.R. § 204.5(h)(4), the petitioner must first establish that this criterion is not "readily applicable" to his field, a claim that he does not make. Moreover, he would need to show that a professional rank is, in fact, comparable to an exclusive membership.

As stated above, the professional rank appears to be a means of securing promotions in the petitioner's field that allow the rank holder to secure higher wages. Moreover, the rank is assigned by a local Tianjin authority and has not been demonstrated to be judged by national or international experts.

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

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The director's conclusion that the petitioner meets this criterion is not supported by the record and must be withdrawn.

The petitioner submitted several articles in New York based Chinese newspapers. Despite the director's request on March 5, 2008 for the distribution or circulation data for these newspapers, the petitioner has never provided such evidence. Moreover, several of these articles contain serious inconsistencies that raise concerns as to the value of this evidence.

The petitioner submitted an August 24, 2006 article in the *China Press* promoting a performance outside Lincoln Center on August 25. The article, however, also reviews the performance, which had yet to occur. Specifically, the article discusses the introduction of the event, the petitioner's performance, the audience's reaction and concludes that a drum player "conducted the whole performance." The petitioner also submitted similarly worded August 24, 2006 articles in the *Singtao Daily* and the *World Journal*. The petitioner also submitted a December 19, 2006 article in the *World Journal* stating that a Peking Opera show on December 22, "won highly appreciations [sic] from the local community." The article goes on to describe the event, which had yet to occur. While a similarly worded article in the *China Press* is dated December 28, 2006, which would allow the newspaper to actually review the event, the wording is nearly identical to the December 19, 2006 article in what would appear to be a competing newspaper. Significantly, the translations do not provide the journalist's name as required under 8 C.F.R. § 204.5(h)(3)(iii). In addition, a December 29, 2006 article in the *SinoAmerican Times* appears to promote events on December 22 and 24. The record lacks an explanation for why the paper would promote events that have passed.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* The record does not resolve the above discrepancies.

The remaining articles, while not containing the discrepancy in dates discussed above, merely review or promote events. No journalist is credited with these articles, suggesting that they are press releases rather than independent journalist coverage. Moreover, none of the articles are specifically "about" the petitioner.

As stated above, in response to the director's request for evidence, the petitioner submitted an unsigned document bearing CCTV's seal. The document primarily discusses the 2005 competition sponsored by CCTV but concludes that the petitioner is an "outstanding" performer and "has made remarkable progress on the artistic path." This document appears to have contributed to the director's conclusion that the petitioner meets this criterion. This document, however, does not meet the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(iii). Specifically, while it is a document prepared by a major media outlet, it is not published material. There is no evidence that this statement appeared in a CCTV or other newspaper, magazine or other publication. There is also no evidence that this statement is a transcript from a television broadcast. While the petitioner may have participated in contests sponsored by CCTV, the record lacks evidence that they were televised. Even if they were televised, performing on television is better considered under the display criterion as performing in a televised competition is not published material about the petitioner any more than a football game is published

material about each individual athlete or a televised series is published material about each actor. Thus, the document bearing the CCTV seal has no relevance to this criterion.

As discussed above, the actual published material in the record, articles published in New York based Chinese language newspapers, are not “about” the petitioner, but events where he performed with others. Even ignoring the discrepancies in dates, the record lacks evidence that these articles represent journalistic coverage rather than self-serving press releases. The record also lacks evidence that these newspapers enjoy a significant circulation or distribution or other evidence regarding these publications that might be consistent with major media.

In light of the above, the record falls far short of establishing that the petitioner meets this criterion.

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

The petitioner did not specifically claim to meet this criterion but noted initially that he was submitting reference letters. The letters praise the petitioner’s skill in the traditional “paint face” Peking opera roles. [REDACTED], Executive Director of the Chinese American Arts Council, asserts that the petitioner’s training “has uniquely equipped to participate in [the] creation of new performance forms and innovative processes.” [REDACTED] provides no concrete examples of these innovations or their influence in the field. The remaining letters also fail to explain how the petitioner has influenced the field.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the performing arts, the contribution must be demonstrably influential. Even assuming the petitioner has created new performance forms and innovative processes, the record lacks evidence that these innovations have influenced the field.

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

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

Initially, the petitioner asserted that he had performed at the Lincoln Center’s Out of Doors Festival and Flushing Town Hall. He further asserted that he had performed on Tianjin TV and CCTV New Year’s broadcasts. Finally, the petitioner asserted that his performances were broadcast on television in the United States. The petitioner submitted a video compact disc. We do not have the equipment to view this disc. Regardless, it is the petitioner’s burden to establish that anything on this disc was broadcast in a manner consistent with national or international acclaim. The petitioner also submitted photographs. These photographs appear to show the petitioner performing at minor outdoor events, small stages, restaurants and other events of unknown significance as windows or vents can be seen

behind the petitioner. Further, the petitioner submitted a January 6, 2007 unsigned certificate from CCTV asserting that the petitioner “has been invited” to perform in productions broadcast on CCTV’s Famous Peking Opera Arias Appreciation Program in 2005 and 2006. The certificate asserts that the productions were broadcast “around the world on Channel 11” on CCTV. Finally, the petitioner submitted programs for his performances in New York, Tianjin and Beijing.

This criterion applies to the visual arts. In order to constitute comparable evidence to meet this criterion, performing artists must demonstrate more than that they appeared on stage. Significantly, performing is inherent to the performing arts and we cannot conclude that merely securing employment in one’s field is indicative of or consistent with national or international acclaim.

The petitioner has not demonstrated that his performances were at exhibitions designed specifically to showcase his art at venues consistent with national or international acclaim. The petitioner has consistently stressed that he performed at the Lincoln Center, but the record does not support the conclusion that performing in an outdoor festival sponsored by Lincoln Center carries the same weight as performances inside the venue itself. The record contains no evidence that Flushing Town Hall is a venue consistent with national or international acclaim. The petitioner has not documented performances in Beijing since 1997. Thus, even if that venue were nationally distinguished, the performance would not be indicative of sustained acclaim in 2007 when the petition was filed. The documented performances at the Tianjin Peking Opera Theater are either undated or from 2001. Thus, even if the petitioner had demonstrated that this theater has a nationally distinguished reputation, his performances there are not evidence of sustained acclaim in 2007. The record contains insufficient evidence regarding the petitioner’s alleged television appearances in 2005 and 2006. The record contains no official confirmation of channel 11’s international or even national reach. A television program or a review published in a contemporaneous newspaper confirming the broadcast would bolster the unsupported assertions contained in the CCTV document which, while bearing a CCTV seal, is unsigned. Moreover, the petitioner’s role in these televised operas is not specified. Without additional evidence, such as that the broadcast was promoted using the petitioner’s name, we cannot determine whether it constitutes a showcase of his art.

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

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The petitioner did not specifically claim to meet this criterion. Nevertheless, he submitted evidence that he was appointed as an artistic consultant for several organizations. Without evidence of the hierarchy of these organizations such that we can determine where this role fits within that hierarchy, we cannot determine whether the role of artistic consultant is leading or critical. We note that some of the appointments are for multiple artistic consultants. Moreover, it is the petitioner’s burden to demonstrate the distinguished reputation of the entities for which he served as an artistic consultant. The record contains no such evidence.

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

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner does not claim to meet this criterion. Nevertheless, the petitioner initially submitted a certificate from the Peking Opera Theater in Tianjin affirming that it employed the petitioner with a salary and other compensation totaling RMB 80,000. The record, however, lacks comparable wages and other compensation for Peking opera performers nationwide in China. As noted above, the petitioner's professional rank, which determines the wages to which he is qualified, was "intermediate." In response to the director's request for additional evidence, the petitioner submitted his 2007 Internal Revenue Service (IRS) Form 1040 U.S. Individual Income Tax Return. This return reflects \$9,161 in wages from an unknown employer and \$6,840 in business income from the "arts." The record does not reflect that these wages compare with the top performing artists nationwide in the United States.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a Peking opera performer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a Peking opera performer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.