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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date:
SRC 08 036 51036

JUN 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:

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
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which 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 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.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director’s decision. Beyond the director’s decision, we find that the petitioner has not satisfactorily demonstrated his realistic intent to continue employment in his field in the United States.

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).

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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a poet. 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.¹

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 an August 14, 2001 "Award hand over" from Baitadi Samaj (Baitadi Society) in Kathmandu, Nepal. The certificate indicates, grammar and spelling as it appears in the original, that at a special cultural program, the Nepali prime minister "hand over award our youth writer [the petitioner] his lot's of writing had appeared on national news paper's and had published book's that so [the petitioner] is awarded by prime minister [the petitioner] is first youth literature writer from far western Nepal who is awarded by national prize." The certificate further states, grammar and spelling as it appears in the original, that the petitioner "is selected for this award epically his epic 'aama ko sapana' focusing of one of the great martyr dashrath chand, this cultural program organized by baitadi samaj." While we acknowledge that English is not the official language of Nepal, it remains that this document, with its gross and numerous grammatical and spelling errors was submitted as the actual award, not a translation.

In light of the gross spelling and grammatical errors, on March 30, 2009, this office requested the original award. The petitioner provided the award in the original Nepali with a complete translation by the Embassy of Nepal, reflecting that the petitioner received a cash prize of 100,000 rupees or approximately \$1,700 according to a letter submitted on appeal from [REDACTED] a section officer of the Baitadi Society.² The certificate confirms that it was presented by the Prime Minister. Thus, we are satisfied that the award is an authentic document. At issue, then is whether it is a nationally or internationally recognized prize or award. The petitioner has documented that the presentation of this

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

² The exchange rate for August 14, 2001 as provided at www.oanda.com/conver/classic (accessed May 29, 2009 and incorporated into the record of proceedings) is consistent with [REDACTED]'s assertion.

award was covered in the *Rising Nepal*, an English-language Nepalese newspaper.³ [REDACTED] asserts that the prize is national, but also asserts that the petitioner was the president of the Baitadi Society beginning in 2000 and received a monthly salary of 100,000 rupees, the award amount. An October 6, 2006 article in the *Kathmandu Post* refers to Baitadi as a district within Nepal.

The petitioner also submitted a “Certificate of Mahakali Literary Regional Award” issued by the Baitadi Society in December 2003. By its name, this appears to be a regional award. The record also contains a July 12, 2004 letter from the President of Nepali Samaj expressing appreciation for the petitioner’s presence at a Nepalese cultural program in South Korea and a February 8, 2005 letter of appreciation from the Manang Family in South Korea for the petitioner’s presence at their Lhoshar Festival, a Nepalese cultural program. Letters of appreciation are not prizes or awards. Finally, the petitioner submitted a letter from the President of “NCSC Group” acknowledging the petitioner’s role with that organization, but this letter does not purport to be a prize or award.

The director concluded that the petitioner had not submitted any objective evidence regarding the significance of the awards, such as national media coverage and that the record lacked evidence regarding the number of awards. On appeal, counsel notes that the beneficiary’s 2001 award was covered in a Nepalese newspaper.

As stated above, the letters of appreciation are not awards or prizes. The petitioner’s 2003 award was a regional award. The record contains little evidence about the Baitadi Society, which, by its name, appears to apply to a single district in Nepal.⁴ The article in the *Rising Nepal* indicates that the society was only four years old in 2001. While the petitioner’s 2001 award from this society was presented by the Nepalese Prime Minister, involved a cash prize of more than \$1,000 and was covered in a Nepalese newspaper, without evidence that the pool of applicants for this award extended beyond the Baitadi District, we cannot conclude that the petitioner competed with Nepalese writers nationwide. In addition, if the petitioner was the president of the society at the time, his selection for a prize by that society is hardly evidence of his notoriety outside this regional society. Moreover, the statute requires extensive evidence of sustained acclaim. Thus, the petitioner must demonstrate sustained acclaim at the time of filing, in this case November 13, 2007. A single award six years prior to the filing of the petition is not indicative of or consistent with sustained acclaim in 2007.

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

³ Given the serious grammatical and spelling errors in this article, the AAO requested the original article, which the petitioner has now provided. Thus, we are persuaded that this is an authentic article.

⁴ The Baitadi district is one of 75 districts in Nepal. See <http://khaptadtourism.com/place/baitadi.html>; http://ncthakur.itgo.com/districtmaps/baitadi_district.htm (accessed May 29, 2009 and incorporated into the record of proceedings).

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 petitioner submitted the abovementioned August 2001 article in the *Rising Nepal* covering the petitioner's receipt of an award from the Baitadi Society. The petitioner also submitted (1) a July 2, 2001 article in *Gorkhapatra* about the Baitadi Society's observance of the Memorial Day of Martyr Dashrath Chand Thakuri where a former Prime Minister released an epic authored by the petitioner; (2) a November 21, 2001 article in the *Kathmandu Post* promoting the petitioner's book exhibition in Kathmandu; (3) an August 2006 article in *Ubamacha* about the petitioner; (4) an October 7, 2006 article in the *Kathmandu Post* covering a literary program in the Baitadi District organized by the petitioner; (5) an October 14, 2006 article in the *Kathmandu Post* covering a literary program in the Banke District of Nepal where the petitioner served as a judge of a youth literary competition; (6) a translation of an April 15, 2007 article in *Kantipu* but no original; and (7) a September 15, 2007 article in *Vishwaparikrama* about the petitioner. As the petitioner did not submit a copy of the foreign language original of the April 15, 2007 article, that article will not be considered. The petitioner also submitted a list of "National Daily Newspapers" prepared by Press Council Nepal with *Gorkhapatra* listed second and the *Kathmandu Post* listed fifth. A report prepared by Asia Pacific Media Network addressed to counsel's law firm reflects that *Gorkhapatra* is Nepal's oldest daily paper and that the *Kathmandu Post* is Nepal's largest selling English daily. The report provides only that the *Rising Nepal* is government owned, with no information about its distribution.

The director concluded that the materials submitted essentially constitute "news release[s] that indicate the [petitioner] was present at several Nepalese cultural events." On appeal, counsel asserts that the director did not accurately characterize the materials submitted. The petitioner submits a letter from [REDACTED], Chief Editor of *Vishwaparikrama* asserting the paper is a Nepalese-American newspaper.

All of the English-language articles are replete with spelling and grammatical errors from beginning to end and the images in the photographs are barely visible. As just a few examples, the article on the petitioner's book exhibit states (spelling and grammar as it appears in the original): "In the speech by [REDACTED] he appreiated [the petitioner] as the fewer of the country and the creation has devotion of country." The same article also states: "His creation are good and is a good writer of litarute his devotion of in this field is laborious." The article on the literary program in Patan states: "Maximum number of literary personalities and shcolars who attended were given a due respect." The headline for the article announcing the petitioner's 2001 award is "Liteary Personality [the petitioner] awarded by Prime Minister." The article on the literary program in Banke includes the following sentence, quoted in its entirety: "In the programme famous poets delivered their poems and worldly." Thus, the AAO requested the original articles, which the petitioner has now provided. While the articles appear to be genuine, we cannot ignore the gross errors within these articles, which go far beyond the occasional typographical error.

Articles that mention the petitioner in the context of covering an event cannot serve to meet this criterion. *See generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). The only articles that are primarily about the petitioner as opposed to being about an event in which the petitioner participated are the articles in 2001 about the petitioner's book exhibition and award in the *Kathmandu Post* and the *Rising Nepal*, the 2006 article in *Ubamacha* and the 2007 article in *Vishwaparikrama*.

The fact that *Kathmandu Post* is the largest English-language newspaper in Nepal does not create a presumption that it is major media. The record contains no evidence that English is widely spoken in Nepal. The pervasive spelling and grammatical errors in the articles themselves and the failure to credit individual staff reporters for their stories⁵ are not consistent with major media. According to the Asia Pacific Media Network, the circulation of the *Kathmandu Post* is 25,000, compared with the *Kantipur National Daily*, which has a circulation of 107,000. Even if the *Kathmandu Post* is major media, the article in that newspaper about the petitioner's book exhibition predates the petition by six years and, thus, cannot demonstrate sustained acclaim. The record contains insufficient evidence regarding the *Rising Nepal*. Specifically, the fact that it is government run says nothing about its distribution or circulation. **The record contains no evidence regarding the circulation of *Ubamacha*.** Finally, *Vishwaparikrama* is a Nepalese-American newspaper. In general, we are not persuaded that a U.S. publication aimed at a specific ethnic group in the United States and published in a language only a small minority can comprehend can constitute major media.

In summary, the published material submitted is either not about the petitioner, is not indicative of sustained acclaim in 2007 when the petition was filed, or has not been demonstrated to have appeared in major media. Thus, the petitioner has not established that he meets this criterion.

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

As stated above, the petitioner submitted a 2006 article in the *Kathmandu Post* covering a literary program in the Banke District of Nepal. The article states (grammar as it appears in the original): "In the stage the youth literacy [the petitioner] was assigned on the role of a judge." The petitioner also submitted a letter from [REDACTED], Chairperson of the International Nepali Literary Society in Woodbridge, Virginia. [REDACTED] asserts that the petitioner served as a poetry judge for the Nepali Literary Society in Virginia on July 15, 2007, where counsel, in his initial cover letter, asserts that the petitioner has been working in an unpaid position.

The director concluded that the petitioner had not demonstrated that the petitioner had served as a judge at the national level and, thus, could not meet this criterion. On appeal, counsel asserts that the petitioner's selection as a judge for the Nepali Literary Society serves to meet this criterion. The

⁵ The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence identifying the author of the published material. All of the material submitted is uncredited, authored by an unidentified "staff reporter" or is identified simply as a "Post Report."

petitioner submits a new letter from [REDACTED] asserting that the petitioner was selected as a judge based on his 20 years of writing experience; having served as a “literature programmer, performer, writer and poetry computation [sic] judge; books and literature appearing in national media among other criteria”; publication in national newspapers; the 2001 prize from the Baitadi Society; the letters of appreciation from South Korean and Baitadi groups and the petitioner’s membership in the Nepali Literary Society.

The evidence submitted to meet this criterion must be evaluated as to whether it is indicative of or consistent with sustained national or international acclaim. *Accord Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005). Without additional information about the youth literary event at which the petitioner served as judge in 2006, we cannot determine the significance of this service. In addition, being requested to judge Nepali literature for a local Nepali association in the United States of which the petitioner was already a member and where he served as a volunteer is not indicative of sustained national or international acclaim in Nepal or in the United States.

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

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

Initially, counsel asserted that the petitioner’s original poetry epics, books and articles serve to meet this criterion. The director concluded that the submission of the beneficiary’s original work did not establish that this work has made a significant impact on the field of literature. On appeal, counsel asserts that the petitioner “has received media coverage and countless awards and letters of elicitation for his writings that promote Nepalese culture, language and history.”

First, the awards and published materials criteria are separate criteria. For the reasons discussed above, the petitioner has not established that he meets either criterion. Regardless, we will not presume that meeting either criterion demonstrates that the petitioner also meets this criterion. To hold otherwise would undermine the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three separate criteria.

The petitioner has authored original poems and epics. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), however, 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 field of literature, it can be expected that the author’s work is considered a “classic” that has had a demonstrable cultural impact on the field, such as being widely taught in literature programs or inspiring a new or emerging genre.

The record contains a translation of two of the petitioner's epics and copies of covers of two books. The covers state that the books were printed and published by Megha Press in Kathmandu. The record contains no evidence regarding the significance of this publishing company. Significantly, the books bear no International Standard Book Number (ISBN) or other evidence of professional publication. The record contains no sales data for these books. In 2001, the petitioner received an honor from a district society and an exhibition of his books was held in Kathmandu. In the same year, the petitioner's epic about the martyr Dashrath Chand was "released" at a ceremony for martyrs. The record does not include publication dates and it is not clear how much the petitioner has published after 2001. The petitioner's self-serving resume indicates he published work in 2001 and 2003. The petitioner also lists a 2007 epic under "published materials" but this epic was published by the International Nepali Literary Society where the petitioner works and it is not clear that this epic was widely distributed as would be expected by a recognized commercial publisher. The petitioner's article in a South Korean college newsletter is about the role of non-governmental organizations and does not appear to be a contribution to the petitioner's field of literature.

The petitioner submitted several letters praising his writing skill and his presentation of Western Nepali culture throughout Nepal, South Korea and the United States. The letters are from the Nepali Society in South Korea, where the petitioner served as president in 2005, the president of the Baitadi Society, the local International Nepali Literary Society in Virginia where counsel asserts that the petitioner has been working as a volunteer, a professor at Mahendra Sanskrit University, a section officer of the Nepalese Supreme Court and the Chairman of the Deuda Society.

On appeal, the petitioner submits reference letters attesting to the popularity of the petitioner's works, but no data regarding the sales of his work or its use in literature or even cultural courses.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information, or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared

especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The record establishes that the petitioner's 2001 publications gained some recognition in Nepal and that several individuals are willing to attest to his skill. The record falls far short, however, of demonstrating that the petitioner's work has impacted Nepalese literature to a notable degree. Without evidence of the impact of the petitioner's original work, we cannot conclude that this work constitutes a contribution of major significance. Thus, 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.

Initially, counsel asserted that the petitioner meets this criterion through his role as a director for the International Nepali Literary Society and founder of the Baltimore chapter of this society. The petitioner submitted certificate of membership and appointment as a director from the society as well as Internet materials about the society. The society describes itself as an international organization of volunteer members who are interested in the languages, literature, art and music of Nepal. The society claims chapters and representatives in 20 countries and 14 U.S. states.

The director concluded that the evidence relating to this criterion was primarily the subjective opinions of the petitioner's references. On appeal, counsel reiterates the claim that the petitioner's role as a director for the International Nepali Literary Society serves to meet this criterion.

At issue for this criterion are both the role for which the petitioner was selected and the reputation of the entity that selected him. The record contains little evidence regarding the number of directors the society has and the nature of this role. Even if we presume that a director necessarily plays a leading or critical role for the society, the petitioner must demonstrate that the society enjoys a distinguished reputation nationally. While we acknowledge that the society was formed in 1991 and has chapters in several countries and U.S. states, we will not presume a distinguished reputation from the society's size and years in existence. The record lacks evidence that the society is widely recognized as a distinguished cultural association beyond the typical reputation of the myriad of cultural awareness associations around the world.

While the petitioner may have played a leading or critical role for the Baltimore chapter of the society by founding the chapter, the record contains no evidence that the Baltimore chapter enjoys a distinguished reputation nationally.

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

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 poet 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 poet with some recognition in 2001, 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.

Beyond the decision of the director, the record does not satisfactorily demonstrate the petitioner's realistic intent to continue working as a poet in the United States. The regulation at 8 C.F.R. § 204.5(h)(5) provides:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

In addition to opening a Nepali school in the United States (including teaching English), which would not fall within the petitioner's claimed area of expertise as a poet, the petitioner states (spelling and grammar as it appears in the original):

I am writing EPIC 'great mother' about American society as soon it will be come publication, those Nepalese people who are ignorant about great American society they will learn education on my EPIC. I can write six languages I am writing this book on six language I hope this will be only one epic on world about American society & culture on explain six different language and this epic will give good knowledge on world about great American society & culture this is extraordinary work , I am writing Epic DEATH TIME this epic history is belong Nepal & Indian common culture I am writing this epic on two language Nepali & Indian , actually language transplantation is not easy work I am doing very hard study about language history I had taken 6 month Japanese language & cultural class in Korea, samcheok national university on Japanese cultural and language department ,I had taken 2 years English language class in Nepal tribhuvan university also I had read more then 14 years English mead aim class in Nepal on school life or university life ,I had read some English novel still I am reading it I had read gurukula education in Nepal about Sanskrit language; I had taken Hindi language class in India utter Pradesh GIC college.

The regulation requires only a letter from the petitioner detailing his plans to earn a living as a writer, the claimed area of expertise.⁶ The above statement does not detail how the petitioner intends to earn a living as a writer, only that he has two epic topics in mind. We cannot ignore that the petitioner's field is literature and that the petitioner has not published anything since at least 2003. Specifically, the petitioner's 2007 epic was published by his employer and the record lacks evidence that it is commercially distributed or otherwise earning the petitioner any money. The gross, numerous and pervasive grammatical and spelling errors in the paragraph quoted above, while saying nothing about the petitioner's ability to write in Nepali, raise unavoidable concerns regarding the petitioner's ability to earn a living as a writer in the United States. The record lacks letters of interest from commercial publishers willing to consider publishing the petitioner's work, possibly with the use of a professional translator. Thus, the petitioner's reasonable intent to earn a living as a writer in the United States has not been established.

For the above stated reasons, considered both in sum and as separate grounds for denial, 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.

⁶ The visa classification sought is an employment-based visa classification and, thus, the petitioner should be able to demonstrate a reasonable intent to earn a living in the United States in his area of expertise.