

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

32-

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

JAN 31 200

LIN 05 088 52281

IN RE:

Petitioner:



Beneficiary:

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:



PUBLIC COPY

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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. 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 argues that “the evidence presented was sufficient to warrant an approval . . . under the statutory and regulatory definitions of extraordinary ability.”

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 to the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) 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 (November 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 earned sustained national or international acclaim at the very top level.

This petition, filed on February 1, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a materials science and engineering researcher. At the time of filing, the petitioner was working as a Research Associate in the Composite Materials and Structure Center (CMSC) at Michigan State University (MSU).

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 pertaining to the following criteria.

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 evidence showing that he worked on a research project that was awarded funding by the United States Department of Agriculture (USDA-MBI Award Number [REDACTED]). According to the "2003 Annual Report" for this project, Dr. Lawrence Drzal, University Distinguished Professor of Chemical Engineering and Materials Science, and Director of the CMSC, MSU, is identified as the Principle Investigator for this project. The report then lists three "Co-principle Investigators," none of whom are the petitioner. We find that receipt of this grant was primarily attributable to the Principle and Co-Principle researchers rather than the Research Associate (the petitioner) and Graduate Student identified in the report. In addressing this evidence, the director's decision stated:

Funding grants . . . do not constitute awards for excellence. Research grants are common in research and generally support future research rather than recognize prior achievement. The petitioner has not shown that a research grant is an award for excellence in the field. To obtain a grant, one prepares an application, explaining the goals of the research and enumerating the resources and personnel needed to conduct that research. It appears that grants are awarded on the strength of the proposal (i.e., future work) rather than the recognized excellence of the grant applicant's past work. Therefore it cannot be argued that the receipt of such funding automatically places the petitioner at the pinnacle of his field. The record contains nothing from any ranking official of this funding agency to establish that this agency considers the petitioner's work to be of greater significance than that of countless other researchers operating with federal funding. Because grant funding is the rule rather than the exception with regard to academic research, receipt of such funds is not self-evident proof of the significance of a particular project, or of the role of one researcher involved with that project.

We concur with the director's observations and find that the preceding research grant from the USDA is a not a nationally recognized award for excellence in the petitioner's field.

The petitioner submitted an August 31, 1999 letter informing him of his receipt of a Science and Technology Agency (STA) Postdoctoral Research Fellowship Award from the Japanese Government. This letter notes that the petitioner's fellowship tenure covered a period of 24 months at the Hyogo Prefectural Institute. In response to the director's request for evidence, the petitioner submitted information about this award posted on the Canadian Institutes of Health Research internet website stating: "The STA, an administrative organization of the Government of Japan, established the Fellowship Program in 1988 to provide opportunities for excellent young foreign researchers in the fields of science and technology to conduct research at Japan's national laboratories and public research corporations." This material further states that the STA fellowship program "will facilitate access to Japanese funding and training facilities for . . . postdoctoral candidates seeking international research training."

The petitioner also submitted a February 18, 1998 letter issued by the University of the Western Cape (South Africa) Chemistry Department informing him of his selection for an Anglo-American Post-Doctoral Fellowship at that university. This letter states: "The Fellowship is a one year contract position to carry out research work of interest to the Centre for Electrochemistry under the coordination of Professor [REDACTED] and the Chairperson of the Chemistry Department Dr. [REDACTED]"

The preceding letters relating to the petitioner's receipt of a STA Postdoctoral Research Fellowship and an Anglo-American Post-Doctoral Fellowship reflect his selection for temporary scientific training opportunities rather than nationally or internationally recognized prizes or awards for excellence in the field. Fellowship appointments such as these are presented not to established scientists with active professional careers, but rather to those individuals seeking to further their research training and experience. The petitioner cannot artificially restrict his field to exclude all those researchers who have long since completed their advanced scientific training and therefore do not compete for such temporary positions. Therefore, it is implausible for the petitioner to argue that his eligibility for a research fellowship elevates him to a level above almost all others in his field.

The petitioner submitted a September 24, 2003 letter from Dr. [REDACTED], Head of the Chemistry Department, Shinshu University, stating that the petitioner attended that university and received a Monbusho Scholarship for his M.S. and Ph.D. studies. Dr. [REDACTED] letter further states:

[The petitioner] received the Japanese Ministry of Education (Monbusho) Scholarship on [sic] 1991 due to his outstanding scholastic ability. Monbusho scholarship supports the work of outstanding students interested in excellence in research and science. Monbusho applicants must have outstanding academic qualifications and be ranked at the top of their class on their campus. Annually, this Monbusho program, sponsored by the Japanese Ministry of Education, offers several scholarships to outstanding students. The Scholarship provides one round-trip ticket to and from Japan, a monthly allowance of 185,500 Yen and a limited allowance for domestic travel. Monbusho scholars are also exempted from tuition, entrance examination fees and entrance fees.

While a Monbusho scholarship recognizes "students" for prior academic excellence, it is not indicative of excellence in one's field of endeavor. As noted by the director, university study is not a distinct field of endeavor, but rather training for future employment in a field of endeavor. The petitioner's Monbusho scholarship was presented for scholastic achievement and the pursuit of further academic study rather than for excellence in the research field. Competition for this scholarship was limited to students within the petitioner's approximate age group and excluded experienced scientific professionals (who had already completed their university studies and who did not have to apply for an academic scholarship). We cannot conclude that an individual selected for a graduate scholarship stands at the very top of his field of endeavor.

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

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the Society of Plastics Engineers, American Chemical Society, and American Institute of Chemical Engineers. The record, however, includes no evidence of the membership bylaws or the official admission requirements for the Society of Plastics Engineers. In regard to the membership requirements for the American Chemical Society, the petitioner submitted a printout from its internet website stating:

[I]ndividuals must have a bachelor's degree in a chemical science from an ACS approved program, a bachelor's degree in a chemical science from a non-approved ACS program and three years work experience, an earned doctor's or master's degree in a chemical science, or less formal training than indicated above but having significant achievement in a chemical science.

In regard to the membership requirements for the American Institute of Chemical Engineers, the petitioner submitted a printout from its internet website stating: "A candidate for election to any grade of membership shall be engaged in an activity and possess scientific knowledge or practical experience which qualify the candidate to cooperate with engineers in the advancement of chemical engineering knowledge and practice."

We do not find that the above admission requirements are indicative of outstanding achievement. There is no evidence establishing that admission to membership in the preceding organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership. Thus, the petitioner has not established that he meets this criterion.

Published materials 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.

In general, in order for published material to meet this criterion, it must be primarily about the alien and, as stated in the regulations, be printed in professional or major trade publications or appear in major media. To qualify as major media, the publication should have significant national or international distribution.

The petitioner submitted a number of articles that merely reference his published work. We note, however, that the petitioner and his work were not the primary subject of these articles. If the petitioner is not the main subject of the material or is not often named in the articles, then such articles fail to demonstrate his

individual acclaim. Scientific articles which cite the petitioner's work are primarily about the author's own work, not the petitioner's work. As such, they cannot be considered qualifying published material about the petitioner's work. We cannot ignore that the articles citing the petitioner's work similarly referenced numerous other authors. In the petitioner's field, it is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field.

The petitioner submitted a four-paragraph article appearing in the May 17, 2004 issue of *Advanced Materials & Composite News*. There is no evidence (such as circulation statistics) showing that this newsletter, which highlighted a number of research papers from the SAMPE (Society for the Advancement of Material and Process Engineering) 2004 Symposium and Exhibition, had significant national or international distribution. Further, the name of the author of the material was not provided as required by this criterion. Rather, the petitioner was identified at the conclusion of the article as a "contact" person. It has not been established that this article was the result of independent media reportage.

The petitioner submitted an article appearing in the December 31, 2003 issue of *Natural Wood & Fiber Composites*. The petitioner's name, however, is not mentioned in the body of the article. The plain language of this criterion requires published material "about the alien." If the petitioner is not mentioned in the article, then it fails to demonstrate his individual acclaim. There is no evidence showing that this newsletter had significant national or international distribution. Further, the name of the author of the material was not provided as required by this criterion. Rather, the petitioner was identified at the conclusion of the article as a contact person. It has not been established that this article was the result of independent media reportage.

In light of the above, 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.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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). For example, evaluating the work of accomplished professors as a member on a national panel of experts is of far greater probative value than evaluating the work of graduate students.

The petitioner submitted correspondence indicating that he reviewed four papers for *Journal of Polymers and the Environment*, one paper for *Composites Science and Technology*, and one paper for *Polymer Degradation and Stability*. We find that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly journals. Occasional participation in peer review of this kind does not automatically demonstrate that the petitioner has earned sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of scientists who publish themselves in scientific journals. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has served in an editorial position for a distinguished journal, we cannot conclude he meets this criterion.

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

In support of the petition, the petitioner submitted a MSU invention disclosure (Number 02-042) dated January 3, 2002 entitled "Polyactic Acid (PLA)-Based Biocomposites and Method of Manufacture." We note, however, that the petitioner did not begin working at MSU until April 2003. "From September 2001 to April 2003," the petitioner was working at the University of Illinois at Urbana-Champaign. The petitioner has not established that this invention resulted from his work rather than primarily the work of MSU inventors [REDACTED] and Dr. [REDACTED].

In response to the director's request for evidence, the petitioner submitted a MSU invention disclosure dated June 13, 2005 entitled "Processing and Properties of environmentally friendly poly (lactic acid)/talc/bio-fibers hybrid composites." This invention disclosure came into existence subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Accordingly, the AAO will not consider this evidence in this proceeding.

Nevertheless, the record includes no evidence showing that either of the above inventions represents a contribution of major significance in the petitioner's field. There is no evidence showing that a United States patent has been granted for these inventions or that the inventions have provided a significant national environmental benefit through their implementation in manufacturing.

The petitioner also submitted letters of support from various individuals discussing his research accomplishments.

Dr. [REDACTED], states that the petitioner has been working under his direction at the CMSC since April 2003. Dr. [REDACTED] further states:

During [the petitioner's] tenure at the Composite Materials and Structures Center (CMSC) of Michigan State University, he has mad many important findings and his work has made important contributions in the field of polymers and composites. His work has been instrumental for the

advancement of biotechnology, particularly in environmentally friendly composites from renewable resources. Through his publications, [the petitioner] has gain [sic] international notoriety.

* * *

In the last two years, tremendous progress has been made through [the petitioner's] research in designing new formulations of bio-plastic composites and in novel processing methods in the CSMC. [The petitioner's] research has resulted in several publications that have appeared in press

Published work, however, falls under the next criterion, a criterion that we find the evidence in this case adequately satisfies. To satisfy this criterion, the petitioner must show not only that the petitioner's work was published, but that it has "major significance" in the field. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for published work and contributions of major significance, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

Dr. Professor, Department of Chemical Engineering and Materials Science, MSU, states:

Please note that my recommendation of [the petitioner] stems from my knowledge of his research and accomplishments and that I have actually collaborated with him during my recent research career. As an expert in the field of biobased products and biopolymers, I believe that I am in an ideal position to evaluate his prior accomplishments as well as the work that [the petitioner] is conducting now in understanding environmentally friendly "green" biodegradable composites from natural fibers and biodegradable plastic and the implications of his findings in the development of the structural materials for automotive, packaging, and housing industries.

* * *

[The petitioner] has already achieved important scientific results in his research project on the natural fiber reinforced environmentally friendly composites. From the results of his experiments, it is quite evident that natural fibers have a very promising future and can be used as a substitute for glass fibers. Surface modifications of hydrophilic natural fibers have achieved some degree of success in making a superior interface, mechanical properties and thermal properties, but lower cost surface modification needs to be emphasized for biocomposites to replace glass fiber composites in many applications in the future. [The petitioner's] results have had a strong impact in our ability to better understand the role of natural fibers in biocomposites. His research works on biocomposites recommended that natural fiber-reinforced composites should be developed and characterized so as to produce cost-competitive biocomposites for industrial applications.

Dr. [REDACTED], Professor, Department of Food Science and Human Nutrition, University of Illinois at Urbana-Champaign, is the petitioner's former research supervisor. Dr. [REDACTED] states:

[The petitioner] contributed to the development of a new Cellulose *nanowhiskers* from microcrystalline cellulose by acid hydrolysis that enables for “green” nanocomposites applications. Moreover, [the petitioner] is able to use wood pulp and recycled newspaper as reinforcement fibers in “green” composite materials in a study of physico-mechanical and morphological properties of the composites that were made from poly (lactic acid) (PLA) and cellulose fibers. The increased interest in the various natural materials for reinforcement has paved the way for increased research activities in the field. [The petitioner’s] current work has become a highly interdisciplinary with great intellectual challenge and enormous practical consequences in the field of Material Science. Additionally, [the petitioner] has been taking the leadership in two projects aimed the first to extract cellulose *nanowhiskers* from microcrystalline cellulose by acid hydrolysis for “green” nanocomposites applications; and the second to use wood pulp and recycled newspaper as reinforcement fibers in “green” composite materials. These works are the outstanding contributions to create a novel low cost and energy saving technology to generate cellulose *nanowhiskers* and to develop environmentally friendly “green” biodegradable composites for plastic industries in the USA, with international implications for environmentally friendly plastic. As a result, [the petitioner] has already published two scientific papers concerning his most recent research works and submitted two more for publications in prestigious journals. He has three papers under preparation for potential publication in international journals and conferences.

The petitioner’s field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in 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 field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner’s work. We cannot consider the petitioner’s latest projects described in Dr. [REDACTED] letter as they occurred subsequent to the date of filing. As stated previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. at 45. Further, the petitioner must demonstrate not only that he has performed original research, but also that it has impacted the field such that it can be considered indicative of national or international acclaim.

Dr. [REDACTED] Professor, [REDACTED], Central Michigan University, asserts that the petitioner has “strong potentials [sic] for making significant contributions in the use of natural fibers in the reinforcement of technical plastics and coatings for the automotive and packaging industries.” With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner’s work, rather than how his past efforts rise to the level of a contribution of major significance.

Dr. [REDACTED], Professor and [REDACTED] Department of Chemical Engineering and Materials Science, MSU, states:

[The petitioner] has applied a variety of analytical methods including various kinds of spectroscopy and microscopy to understand experimental aspects of composite materials and develop new bio-based composites and “green” nanocomposite materials.

* * *

{The petitioner} has demonstrated the viability of new fully biodegradable, environment-friendly green composites that have good properties and could replace plastic parts in the interiors of cars, in packaging materials and other consumer products.

Dr. [REDACTED], Fellow and Director of Research and Development, Guidant Corporation, states: “[The petitioner] has . . . achieved important scientific results in his research projects on natural fiber reinforced environmentally friendly composites. From the results of his experiments, it is quite evident that natural fibers have a very promising future and can be used as a substitute for glass fibers.”

Dr. [REDACTED] Professor, Department of Polymer Science and Engineering, Gyeongsang National University, states: “One of the noble scientific achievements by [the petitioner] in Membrane Technology was that the insertion of a second polar moiety into an amphiphilic structure influences molecular properties. . . . [The petitioner] was one of the first to investigate this excellent and exceptional funding [sic].”

While the petitioner’s research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or published research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole. In this case, we find that the evidence submitted by the petitioner is not adequate to establish that his research findings rise to the level of a contribution of major significance in his field.

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

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence of his authorship of scholarly articles in publications such as *Journal of Materials Science*, *Bulletin of the Chemical Society of Japan*, and *Materials Science and Engineering A*. The petitioner also submitted evidence of a moderate number of cites to his articles showing that others in his field have found his work to be significant. We find that the petitioner’s evidence is adequate to minimally satisfy this criterion.

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

On appeal, counsel argues that the petitioner’s conference presentations satisfy this criterion. The plain language of this criterion, however, indicates that it applies to the visual arts (such as sculpting and painting) rather than science or engineering. In the fields of science and engineering, acclaim is generally not established by the mere act of presenting one’s work at a conference. The record includes no documentation demonstrating that the presentation of one’s work is unusual in the petitioner’s field or that the invitation to

present at conferences where the petitioner spoke was a privilege extended to only a few top scientists or engineers. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level. The record includes no evidence showing that the petitioner's presentations had significantly higher rates of attendance when compared to those of the other conference participants or that the petitioner has served as a keynote speaker at a national science or engineering conference.

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

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. 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.