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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
LIN 07 273 54062

Office: NEBRASKA SERVICE CENTER

Date: **APR 23 2009**

IN RE:

Petitioner:
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:

[REDACTED]

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 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 in athletics. The director determined that 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 petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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, 60898-99 (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, filed on August 14, 2007, seeks to classify the petitioner as an alien with extraordinary ability in the martial arts (karate). Regarding his plans for employment in the United States, the petitioner submitted an August 13, 2007 affidavit stating:

I have a plan to open a training school of Karate where people can get basic to advance level of Karate training so that they could protect the country as well as themselves from the terrorist or other bad guys. Thus, I have also a plan to organize international/national/regional or local tournament to promote the Karate arts if I am permitted to stay in the United States.

In response to the director's request for evidence, the petitioner submitted a letter from the president of the Falcon International Karate Do Association in Woodhaven, New York stating: "[The petitioner] is enrolling in our Instructor Program since September 28, 2007 and as soon as he will finish this course and his immigration status is legal at this country, he will start working as a karate Instructor here at Falcon International Karate Do Association."

Aside from his activities as a karate instructor and coach, the record includes evidence showing that the petitioner competed in national and international karate competitions from the mid-1990s to 2004. However, according to the petitioner's affidavit and the letter from the Falcon International Karate Do Association, he is seeking work in the United States as a karate instructor rather than as a competitive athlete. Subsequent to 2004, there is no evidence indicating that the petitioner, age 34 at the time of filing, has remained active as a karate competitor at the national or international level. The statute and regulations require the petitioner's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a karate competitor and an instructor certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and karate instruction are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. In the present matter, there is no evidence showing that the petitioner has sustained national or international acclaim through achievements as a karate competitor subsequent to 2004 or that he intends to compete here in the United States. Further, the evidence is clear that the petitioner intends to work as a karate instructor. While the petitioner's athletic accomplishments as karate competitor are not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements as a karate instructor and coach.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to 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 a certificate from the Full-contact Submission Arts (F.S.A.) Kenshinkan Karate Federation stating that he attained "the First Rank in black belt Shodan." The petitioner also submitted certificates from the Nepal Kyokushin Karate-Do stating that he successfully completed the basic methods and techniques of karate and attained the rank of 2nd Dan Black Belt. The plain language of this regulatory criterion requires the petitioner's receipt of "nationally or internationally recognized prizes or awards for excellence in the field." The preceding certificates reflect that the petitioner earned a promotion in rank based on his successful completion of a karate skills examination. Such promotions are inherent to the martial arts and they represent standardized progression to the next skill level. Further, there is no evidence showing that the ceremony in which the petitioner received his certificates commanded national or international recognition. Accordingly, the petitioner has not established that his successful mastery of required methods and techniques and attainment of a higher Dan ranking constitutes his receipt of nationally or internationally recognized prizes or awards.

The petitioner also submitted the following:

1. Award certificate stating that the petitioner "won the award in International F.S.A. Absolute 1 tournament according to daily practice results and showing good Karate-do spirit" (September 26, 2003).
2. Award certificate and tournament results reflecting that the petitioner placed second in the Light Weight Division at the 2003 F.S.A. Absolute tournament.
3. Certificate stating that the petitioner received a medal for placing third in the "Men Open Weight Category" at the "First Thamel National Open Full Contact Karate Tournament" (February 1999).
4. Certificate stating that the petitioner was recognized "for his achievement as a Best Fighter on First Imadol Kyokushin Karate (Full Contact) Tournament" (1996).

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

The record does not include supporting evidence demonstrating the significance and magnitude of the preceding competitions. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence showing that petitioner's awards commanded a significant level of recognition beyond the competitive events where they were presented.

In his affidavit, the petitioner claims to have won a First Prize at the Muay Thai Challenge Tournament in Bangkok in 2004, but there is no evidence from the presenting organization showing that he actually received this prize. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this instance, there is no evidence establishing that the petitioner received a First Prize at the Muay Thai Challenge Tournament or that the prize was nationally or internationally recognized in his field.

The record lacks evidence indicating that the petitioner has received awards in karate competition subsequent to 2003 or that he intends to continue competing in the United States. As discussed previously, the statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While the petitioner's awards as a competitive athlete are not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) through his achievements as an instructor or a coach. As such, the petitioner's awards and competitive results demonstrating his past record of success as a karate competitor from the 1990s to 2003 cannot serve to meet this regulatory criterion.

Nationally or internationally recognized prizes or awards won by karate competitors coached primarily by the petitioner, however, can be considered for this criterion. In that regard, the petitioner submitted a letter from [REDACTED], President, Nepal International Taekwon-Do Federation, stating that the petitioner "has produced numerous players who have achieved the National and International Titles." [REDACTED]'s letter does specifically identify the athletes coached by the petitioner or the titles that they won. In this case, there is no evidence showing that karate athletes coached primarily by the petitioner have won nationally or internationally recognized prizes or awards.

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, a 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. Further, 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 a certification from the International F.S.A. Kenshinkan Karate Organization Head Office in Japan stating that he has "membership in Headquarters" and has "responsibility as a Branch Chief in Nepal." The petitioner also submitted a letter from the Nepal Kyokushin Karate-Do Association stating that the petitioner has attained a black belt ranking in its organization. While the petitioner has met the requirements to attain his belt ranking and serve as a branch chief, there is no evidence demonstrating that either of the preceding organizations requires a black belt to become a member.² Nor is there evidence identifying the specific requirements that must be satisfied to attain a black belt or a Branch Chief position. The record does not include evidence (such as membership bylaws or official admission requirements) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the martial arts. Accordingly, 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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

The petitioner submitted articles in *Gorkha Patra* and *Budora*, but these articles were not primarily about him. The plain language of this regulatory criterion requires that the published material be "about the alien." The petitioner also submitted articles about him in *Sanjiveeny Patra*, *Saptahik Janasatta*, *Nepal Samachar Patra*, *Himal National Monthly*, *Kantipur*, *Annapurna*, and *Kavre Times*. In response

² For example, there is no evidence showing that lower belt rankings are excluded from membership.

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

to the director's request for evidence, the petitioner submitted a letter from the Chief Editor of *Sanjiveeny Patra* asserting that the paper is a "leading national daily" paper in Nepal with weekly circulation of 100,000 copies, a letter from the Senior Assistant Editor of *Nepal Samachar Patra* asserting that the publication is a "leading News Paper in Nepal" with a daily circulation of 100,000 copies, and a letter from the Associate Editor of *Kavre Times* asserting that the publication is "one of the leading weekly News Paper [sic] in Nepal" with a circulation of 50,000 copies. The self-serving nature of the statements from these editors is not sufficient to demonstrate that their publications qualify as forms of major media. The record lacks objective circulation information from an independent source showing the ranking of the newspapers relative to other national media. With regard to the national distribution of *Kantipur*, counsel cites information obtained from *Wikipedia*. Regarding information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁴ See *Lamilem Badasa v. Michael Mukasey*, No. 07-2276 (8th Cir. August 29, 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source.

In this case, the petitioner has not submitted evidence establishing that the preceding articles were in professional or major trade publications or some other form of major media. Accordingly, 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

⁴ Online content from *Wikipedia* is subject to the following general disclaimer:

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See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on April 20, 2009, copy incorporated into the record of proceeding.

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).

The petitioner submitted a December 25, 2005 participation certificate and a March 26, 2008 letter from [REDACTED] 6th Degree Black Belt, and Chief Examiner and Chief Instructor of the International F.S.A. Kenshinkan Karate Organization of India, stating that the petitioner “was the main referee” at the First National F.S.A. Kenshinkan Karate Tournament in December 2005. The petitioner also submitted a digital video disc showing footage from the tournament.

The petitioner submitted a certificate acknowledging his participation as an “Assistant Referee” at the “Second Banasthali and First Late Tirtha Ratna Bajracharya Memorial all Nepal Full Contact Men Weight Category and Women open category Karate Tournament 2006.” The petitioner also submitted a letter of appreciation for his participation as an “Assistant Referee” at the First Baghmati Zonal Open Karate Tournament in November 2001.

In his affidavit, the petitioner claims to have refereed at the “Banasthali Kyokushin Karate Tournament” in Kathmandu on February 24, 2007, but there is no evidence from the tournament organizers confirming his participation. 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. at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N at 190). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this instance, there is no evidence establishing the petitioner’s participation as a referee.

With regard to the petitioner’s participation as a referee at the preceding karate tournaments, the record lacks official competition rules showing that serving as a “referee” is tantamount to participation as a “judge” of the work of others. Even if the petitioner were to establish that refereeing a karate tournament is tantamount to judging the work of others in his field, there is no evidence showing the names of the athletes evaluated by the petitioner, their level of expertise, documentation of his assessments, or the level of acclaim associated with judging at the events. Without evidence showing, for example, that the petitioner’s activities involved judging top competitors or were otherwise consistent with sustained national or international acclaim at the very top level of his field, we cannot conclude that he meets this criterion.

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

On appeal, counsel states that the petitioner introduced F.S.A. Kenshinkan Karate in Nepal. The petitioner submitted a November 20, 2003 article in *Nepal Samachar Patra* entitled “New Karate Kenshinkan” stating:

The Kenshinkan Karate is the latest one to be introduced in Nepal. Kyokushin Karate Branch Chief of Kavre, [the petitioner], has introduced this Karate from Japan with the help of Mr. [REDACTED] a. Mr. [REDACTED] 10th Dan of Kenshinkan[,] introduced with the mixture of Full Contact and Submission Art in the Land of Martial Art.

To learn about it and to introduce in Nepal, [the petitioner] has been to Japan [i]n July. He lear[ned] Kenshinkan Special Cour[s]e

According to the preceding article, [REDACTED] of Japan was the original creator of Kenshinkan Karate. While the petitioner may have co-introduced this form of karate in Nepal after his tutelage in Japan, there is no evidence showing that Kenshinkan Karate was his own original contribution or that its introduction in Nepal was a contribution of major significance in the martial arts.

We acknowledge the petitioner's submission of brief reference letters from the Kyokushin Karate Organization, Nepal Kyokushin Karate-Do Association, Nepal International Taekwon-Do, Federation, and the Nepal Branch of the International F.S.A. Kenshinkan Karate Organization praising his talents as a competitor and an instructor. Talent in one's field, however, is not necessarily indicative of original athletic contributions of major significance. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field.

With regard to the petitioner's athletic and coaching achievements, the reference letters do not specify exactly what the petitioner's original contributions in karate have been, nor is there an explanation indicating how any such contributions were of major significance to the martial arts. 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. While the petitioner has helped his students with their skills and training, there is nothing in the reference letters to suggest that he has developed original training techniques, as opposed to methodologies passed down from his own tutelage in the sport. Further, even if the techniques taught by the petitioner were found to be original, there is nothing to demonstrate that these techniques have had major significance in the martial arts. For example, there is no evidence showing that the petitioner's training techniques have been widely adopted throughout his sport or have significantly influenced others in his sport nationally or internationally.

In this case, the reference letters submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 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 of support from the petitioner's personal contacts 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. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations.

Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of that one would expect of a martial arts athlete or a karate instructor who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his sport, or has otherwise risen to the level of original contributions of major significance, we cannot conclude 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.

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

On appeal, counsel argues that the petitioner's role as Branch Chief of the F.S.A. Kenshinkan Karate Organization in Nepal meets this regulatory criterion. With regard to the petitioner's role for this organization, there is no evidence showing that the Nepal branch has a distinguished reputation. Further, the record lacks supporting evidence demonstrating the leading or critical nature of the petitioner's role. For example, there is no information detailing petitioner's specific duties as Branch Chief or the importance of his role to the organization's operations. Accordingly, 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.

In response to the director's request for evidence, the petitioner submitted letters from the Kabhre English Secondary School, the Shree Bekateswor English School, the Nightingale Academy, the Saraswati Shiksha Griha Secondary School, the Gyankunja Cooperative Society Ltd., and the Shree Chakra Jyoti L. Secondary School specifying his monthly salary while employed by them. The petitioner also submitted a statement from his accountant reflecting his "net assets" and "annual income" for 2006. The plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. Accordingly, 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 national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

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 a 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.