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Washington, DC 20529



U.S. Citizenship  
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Services

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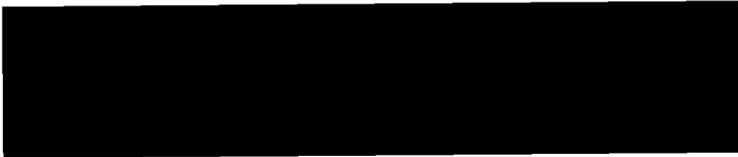
Office: NEBRASKA SERVICE CENTER

Date: **JAN 14 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)

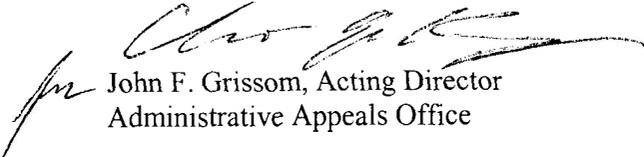
ON BEHALF OF PETITIONER:



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 Director  
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 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 the arts. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

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

(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.

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, 60898-99 (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 she has sustained national or international acclaim at the very top level.

This petition, filed on June 6, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a film producer. The petitioner submitted supporting evidence both with his initial application and in response to a Request for Evidence ("RFE") dated March 9, 2007 including letters of recommendation, news articles, and tax documents.

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). Congress' example of a one-time achievement is a Nobel Prize. H.R. Rpt. 101-723, 59 (Sept. 19, 1990). Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples

of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award (most relevant for film makers), and an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a \$1 million cash prize. While an internationally recognized award could constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

Initially, the petitioner asserted that the eight awards received by the film he produced, [REDACTED], evidence his receipt of major internationally recognized awards. First, we note that the record contains only secondary evidence of the awards as evidence of the prizes comes from letters written by the festival organizers, mentions in newspaper articles, and a list submitted for the first time on appeal appearing on the website, the Internet Movie Database ("IMDB") instead of submission of the awards themselves (or photographs of those awards). In addition, all but one of the awards were not for the overall winning film of the festival: [REDACTED] won the Audience Award at the Boston Jewish Film Festival, the Palm Springs International Film Festival, the Paris International Cinema Meeting, the San Diego Jewish Film Festival and the Washington Jewish Film Festival. The film won the award for best Israeli film at the Berlin Jewish Film Festival, the award for best cinematography at the Jerusalem Film Festival, and an Honorable mention at the Viennale. Only the prize from the Kiev Contact- International Documentary Film Festival was the Grand Prize of the Festival.

Secondly, while these awards may result from nationally or internationally recognized festivals, they do not amount to awards from a major, internationally recognized film festival. There is no evidence establishing the international significance and magnitude of these competitions. For example, the petitioner submitted no evidence to show that the winner of these festivals received international media attention in the general or film media of multiple countries worldwide or other indicia of major, international recognition. We cannot ignore that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3) qualifies the phrase "international recognized award" with the limitation "major." Without evidence distinguishing the level of acclaim associated with earning a prize from the above mentioned film festivals from that of other international film festivals, we cannot conclude the petitioner has established his eligibility through a one-time achievement. Nonetheless, the petitioner's receipt of awards for his film *Watermarks* is relevant to the first criterion at 8 C.F.R. § 204.5(h)(3)(i) and will be further discussed below.

On appeal, the petitioner stated that his selection as a judge for the 2007 News & Documentary Emmy Awards constituted a major, internationally recognized award. First, the selection of the petitioner as a judge was made after the filing of his petition (the letter asking the petitioner to be a judge is undated, counsel in his letter on appeal states that the petitioner was invited to serve as a judge on August 13, 2007; the petition was filed June 6, 2006). A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971). Second, even if it occurred prior to filing, the selection of the petitioner as a judge for the News & Documentary Emmy Awards does not constitute a major, internationally recognized award. Although the receipt of an Emmy may qualify as a major, internationally recognized award, no evidence appears in the record that the judging of the Emmy awards carries with it the same esteem as actually winning the award. The only evidence appearing in the record, the selection letter, does not state how judges are chosen so as to catapult the

selection of a judge to the same level as the selection for an award. The selection of the petitioner as a judge of the News & Documentary Emmy Awards properly falls under criterion (iv) below and will be addressed further in that context.

In light of the above, the petitioner has not established that he received a major, internationally recognized award. While the prizes awarded to the petitioner's film are evidence of recognition of his film, the petitioner has not established that the prizes from these film festivals are evidence of major, international recognition as required by the regulation. Nor did the petitioner establish that the selection as a judge for the News & Documentary Emmy Awards constitutes a major, internationally recognized award in and of itself.

Barring the alien's receipt of a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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 an alien's 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). We address the evidence submitted in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not addressed below.

*(i) 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 that the documentary film he produced, *Watermarks*, won various awards (listed above). While we recognize that an award for best picture in part recognizes the producer of a film, in this case, the record does not include evidence showing the significance and scope of the prizes awarded to the film. Nor is there general information about the competitions (such as the number of entrants or the percentage of entrants who earned some type of recognition). From their names, some of the film festivals appear to be regional in nature instead of nationally or internationally recognized; for example, the Boston Jewish Film Festival and the San Diego Jewish Film Festival. In addition, the award for best cinematography at the Jerusalem Film Festival is not attributable to the petitioner as a producer.

In any case, the petitioner failed to submit sufficient evidence that any of the honors awarded to *Watermarks* at the nine film festivals were nationally or internationally recognized. For example, no supporting evidence appears in the record showing that the recipients of the awards were announced in major media or in some other manner consistent with national or international acclaim at the very top of the field. The petitioner submits a news article documenting his receipt of the Kiev International Film Festival award (which is referred to in the article as the Ukrainian International Documentary Film Festival), which seems to have appeared on the website of Swiss Film News. The petitioner submitted no evidence that the Swiss Film News is, for example, a form of major media or is consulted by the film industry as a trade publication. Similarly, the petitioner provides an article appearing in the *Boston Globe* mentioning that [REDACTED] won the audience award at the Boston Jewish Film Festival, however, the *Boston Globe* would seem to be a local publication, appearance in which would not be consistent with national or international acclaim. 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. Accordingly, the petitioner does not meet this criterion.

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

The petitioner did not initially claim eligibility under this criterion, however on appeal, counsel claims that the criterion is met by the petitioner's selection as a judge for the News & Documentary Emmy Awards. As stated above, evidence in the record indicates that this selection was made after the filing of the petition so that it cannot be considered. *Matter of Katigbak*, 14 I. & N. Dec. at 49. We emphasize here that the ten regulatory criteria at 8 C.R.F. § 204.5(h)(3) are separate and distinct from one another. Because separate criteria exist for membership in associations (criterion (ii)) and participation as a judge (criterion (iv)), USCIS clearly does not view the two criteria 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. Even if the invitation had been issued prior to the filing of the petition, the plain language of this criterion requires that a petitioner show membership in an association; the petitioner submitted no evidence that an association exists of Emmy judges or that any such association has membership requirements that include outstanding achievements of the members. The only evidence submitted by the petitioner regarding his Emmy judging comes in the form of two letters: one an invitation and one a thank you for his service dated August 13, 2007. Both letters speak of the commitment as "a day or two" of the judge's time, do not discuss the selection criteria or the requirements for judges, and do not state or insinuate, for example, that any other sort of ongoing commitment or organization results from judging the one set of awards. Accordingly, the petitioner does not meet this criterion.

*(iii) 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.<sup>1</sup>

The petitioner submitted only two news items that are either about him or contain more information about him than his name as producer: a printout from the Internet Movie Database (IMDB) website with his production and writing credits for [REDACTED] and an article from the *Jewish Week* that focuses on the movie and the concept as developed by the film's director. The IMDB material does not indicate the requisite acclaim as the petitioner's webpage contains no information save his role in [REDACTED]. We note that the IMDB's stated

<sup>1</sup> 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.

purpose is to list everyone involved with every film made so that appearance on the website does not indicate any sort of prestige. The *Jewish Week* article is not primarily about the petitioner as it contains no information about him and instead uses quotes by the petitioner to further its discussion of the movie and the director.

The petitioner also submitted numerous articles that discuss his film, but these articles are not about the petitioner himself. Reviews of the film submitted by the petitioner include articles in the *Boston Globe*, *Swiss Film News*, *New York Times*, *Jerusalem Post*, *the Desert Sun*, *Forward*, *Screen Daily*, *New York Post*, *TV Guide online*, *Reuters*, *Yahoo news*, *the Miami Herald*, *the Palm Beach Post*, *the Ventura County Star*, and *Time Out New York*. Most of these articles do not contain the petitioner's name at all; the few that do mention the petitioner's name only do so in listing credits for the movie. Even those articles that contain more than a review of the movie focus on the director of the film's role. For example, an article submitted from SouthFlorida.com refers to the film as "[the director, ██████████'s story . . ." and an article from The Nation speaks of "██████████'s beautiful and humane documentary ██████████" neither article mentions the petitioner's name in discussing the film. In his appellate brief, counsel argued that the discussion of the film equated to a discussion of the petitioner in these news articles. However, the regulation requires that the published material be "about the alien . . . relating to the alien's work," not a discussion solely about the collaborative project in which the alien was involved without also mentioning the alien and his specific work on the project. None of the submitted articles discusses the petitioner by way of, for example, his background or his role in the production of the film, but instead discusses the film itself. Counsel also argues that the mention of ██████████'s name in the material does not diminish the impact of the acclaim due to the petitioner. Although we agree that multiple people may take credit for a single film, the focus on ██████████ in this material further demonstrates that the material is not primarily about the petitioner. Accordingly, the petitioner does not meet this criterion.

*(iv) 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 petitioner did not initially claim to meet this criterion. In his RFE response, counsel claims the petitioner meets this criterion because he was invited to judge the News & Documentary Emmy Awards. As stated above, this invitation was issued after the petition was filed and consequently cannot be considered. *See Matter of Katigbak*, 14 I. & N. Dec. at 49. In addition, the material submitted with his appellate brief indicates that the petitioner did not actually serve as a judge until after the petition was denied (the letter from the Director of the News & Documentary Emmy Awards is dated August 13, 2007 while the petition was denied on July 19, 2007). Even if the petitioner served as a judge prior to the filing of his petition, he provides no evidence that such service demonstrates national or international acclaim, such as, for example, the selection criteria used in inviting individuals to become judges. The August 13, 2007 letter from ██████████ indicates that the Emmy awards use "broadcast journalism professionals" who "evaluat[e] the work of [their] colleagues." The letter contains no indication that the judges are more experienced or more renowned within the field than any other broadcast journalism professional. Nor did the petitioner submit any evidence that service as a judge is generally considered to be reserved for those individuals with higher acclaim within the industry as opposed to any professional who volunteers. Consequently, the petitioner does not meet this criterion.

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

The petitioner claims eligibility under this criterion by stating that his “ability in the international production field have consistently recognized as extraordinary by the most noted experts of the United States, Europe’s foremost film entities.” (errors in original). On appeal, counsel claimed that the petitioner met this criterion by producing his “award-winning film [REDACTED] with international acclaim.” As stated above, each criterion under 8 C.F.R. § 204.5(h)(3) are separate and distinct. The petitioner’s argument that he made a significant contribution to the field by producing an award-winning film means that the awards considered under criterion (i) would also qualify as major achievements within the field under criterion (v). 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. Neither the petitioner nor his counsel provide an argument as to how the petitioner or the film [REDACTED] made a contribution of major significance to his field outside of the receipt of film festival awards.

The petitioner did submit support letters from television and film industry professionals who have worked with him. While testimonials such as these provide relevant information about an alien’s experience and accomplishments, they cannot by themselves establish the alien’s eligibility under this criterion because they do not demonstrate that the alien’s work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner’s contributions.

A March 23, 2006 letter from the director of [REDACTED], states that the petitioner has had a “long and distinguished career as a producer [that] has earned him the respect and admiration of his colleagues throughout the international film production industry.” In addition to [REDACTED], the letter states that the petitioner produced two other films that “were screened at major festivals, including Cannes Film Festival, Berlin Film Festival, and FIPA (Biarritz, France), and honored with citations and awards . . .” No other evidence appears in the record about these other films such as, for example, press recognition of the awards or copies of the awards themselves. A March 24, 2005 letter from [REDACTED] manager of documentary acquisitions at HBO, stated that HBO believes that [REDACTED] “was one of the best documentaries of recent years” and that HBO hoped to collaborate with the petitioner in the future. A letter from [REDACTED] managing director of Zadig Productions, stated that the petitioner is “one of the brightest professional in the field to day.” (errors in original). Neither letter contained information about the petitioner’s impact upon his field, if any.

The preceding letters of recommendation discuss the petitioner’s talent as a film director, but they fail to include any substantive discussion as to how [REDACTED] or the other films the petitioner has worked on rise to the level of original contributions of major significance 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. While the petitioner’s work is admired by those offering letters of support, there is no evidence demonstrating that his work has had major significance in the field. For example, the record does not indicate the extent of the petitioner’s films’ influence on other film professionals nationally or internationally, nor does it show that the field has somehow changed as a result of the petitioner’s work.

Three of the letters submitted speak of the petitioner's aptitude at film making in the context of future endeavors. A March 1, 2005 letter written by [REDACTED], president of [REDACTED], states that the petitioner "is a very focused and demanding young producer . . . [and] is only at the beginning of an exciting and rich career." A February 17, 2005 letter from A [REDACTED] stated that the petitioner is "a major talent" who "will make enormous contributions to the field." A May 1, 2007 letter from [REDACTED] stated that the petitioner "will contribute greatly to the field of filmmaking in the years to come." However, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I. & N. Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971).

The petitioner also submitted a copy of a June 9, 2005 letter from [REDACTED], writing for the Alliance of Motion Picture & Television Producers, submitted in support of his O-1 nonimmigrant visa petition. Although the words "extraordinary ability" are used in the Act for both the nonimmigrant O-1 classification and the first preference employment-based immigrant classification, the applicable regulations define the terms differently for each classification. The O-1 regulation explicitly states that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(o)(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines 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 evidentiary criteria for these two classifications also differ in several respects. Given the clear regulatory distinction between these two classifications, the beneficiary's prior receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability.

The record contains no other evidence that the petitioner has made original and major contributions to his field. The media articles discussed above under the third criterion indicate that the petitioner has received recognition for *Watermarks*, but not that he or the film made a significant impact in his field consistent with sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

*(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

This criterion generally applies to the visual, not performing, arts. However, because counsel claimed that the showing of *Watermarks* at various film festivals falls under this criterion, we have considered the relevant materials as comparable evidence of the petitioner's eligibility pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). We note again that each criterion under 8 C.F.R. § 204.5(h)(3) are separate and distinct. Showings of *Watermarks* at the various film festivals resulting in awards as applied under criterion (i) cannot be used under criterion (vii) for the display or showing of the film itself at these same festivals. In addition, the petitioner did not submit any evidence that any of these film festivals are prominent and notable or are critically acclaimed festivals that enjoy prominence throughout their individual nations or internationally such that the film's participation would reflect national or international acclaim. The petitioner does not meet this criterion.

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

The petitioner claims to meet this criterion by virtue of the invitation to judge the News & Documentary Emmy Awards. As discussed above, the invitation and actual participation occurred after the filing of this petition so that the petitioner did not demonstrate eligibility at the time of filing. *See Matter of Katigbak*, 14 I. & N. Dec. at 49. In addition, even if properly under consideration, the petitioner failed to show how the limited role of

acting as a judge at the 2007 News & Documentary Emmy Awards would amount to his performance of a leading or critical role for the organization overall. The Emmy Awards occur every year and involve numerous judges. The petitioner has not shown how one judge's participation for "a day or two" in one year's award show amounts to a leading or critical role for the organization. Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner made one successful film, *Watermarks*, which gained recognition in some film festivals. However, the record does not establish that the petitioner had achieved sustained national or international acclaim placing him at the very top of his field at the time of filing. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed. This decision is rendered without prejudice to the filing of a new petition under section 203(b)(1)(A) of the Act with the requisite supporting evidence.

**ORDER:** The appeal is dismissed.