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U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 07 070 52546 Office: NEBRASKA SERVICE CENTER Date: MAR 05 2009

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:

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. The petition 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 the arts. 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.

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.

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 has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an automotive surface finisher and painter. According to the documentation of record, the petitioner’s background is primarily in the area of production of prototype automotive models for major automobile manufacturers. In a February 16, 2004 letter, [REDACTED] of Futura Design Limited (Futura) in Birmingham, U.K., provides background on this process:

The preparation of a clay model is an essential step in the design of a car, truck, or SUV. Clay model makers at Futura produce full-sized and scale models of automobile exteriors, interiors, and parts from clay, following CAD [computer assisted design] sketches and designer specifications. Having constructed a steel and/or wood chassis and a plastic foam infrastructure, the clay model maker uses sculptor's tools and scrapers to mold an exact replica of the auto design to the precise symmetry and shape . . . specified by the designers' plans.

Production of the clay model is a critical step in the evolution of a vehicle that is intended for production, since the preparation of a prototype from clay forces designers to confront issues of the size, shape, contour, and fit of each part that will constitute its interior and exterior. Completion of the model also enables design engineers to examine the fit of multiple parts and measure precisely the dimensions of every component. . . .

When the automotive designer wants a model that will be transported and displayed, the material of choice is fiberglass. This is the case with a "concept car," a vehicle that is not intended for production, but which embodies the design innovations a company's Chief Designer plans to introduce within future production vehicles of a particular brand. If the concept car is to be shown, perhaps at automobile shows, the model usually will be constructed over a working automotive chassis, and will include a detailed and finished interior.

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. In his December 14, 2006 letter accompanying the petition, the petitioner claimed to meet four of the required criteria and submitted evidence as follows.<sup>1</sup>

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

The petitioner stated that he meets this criterion based on the recognition of the automobiles that he has worked on at automotive events. The petitioner stated that a 1932 Ford Model B Roadster on which he performed the surface and paint work won "Best-in-Show" at the 2006 "Supernats," which is sponsored by the National Street Rod Association of the U.K. The petitioner submitted copies of photographs of the car with a sign indicating that it had been recognized as "Best in Show" based on the overall condition of the vehicle. The petitioner submitted no documentation that the "Best in Show" at the Supernats is a nationally or internationally recognized award.

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

The petitioner also submitted a January 29, 2004 letter from [REDACTED], who identified himself as the [REDACTED]. Mr. [REDACTED] stated that the petitioner had worked with him on several concept vehicles, including the 1993 Isuzu "Vehicross," which won best concept at the Tokyo Motor Show, the 1995 Isuzu "Deseo," which won best concept vehicle at the Detroit Motor Show and was Autoweek's concept car of the year, the 2000 Cadillac "Imaj," which won best concept at the Birmingham Motor Show and best interior at the Paris Motor Show, the 2001 Cadillac "Cien," which won best concept, best in show, and most significant concept at the Detroit Motor Show, and the Autonis Award in Germany. The petitioner also submitted a March 12, 2004 letter from [REDACTED] Mr. [REDACTED] stated:

Before I became [REDACTED] for [REDACTED] in 1999, I was chief designer for [REDACTED] one of the foremost design studios in the world. During my time there I worked as a consultant for many automotive companies including Volvo, Nissan, Renault, Land Rover, Aston Martin, Ford, GM and Jaguar. My most well known project was the Design of the [REDACTED] (the best selling Aston ever), for which I received a number of awards, including the prestigious Jim Clark award in 1995. Other projects I was directly responsible for were the Volvo C70, the Nissan R 390 Le mans racing car, Aston Martin Vanquish (concept car of the show – Detroit 1998), Ford Puma and the Rover 75 wagon. Since TWR, I completed the new Aston martin DB9. [The petitioner assisted me with a number of these cars helping to finesse the models to the highest quality. His work on the Vanquish concept car was exceptional, for which we won Concept Car of the Show – Detroit 1998.

[The petitioner] has continued to assist me with the build and finish of numerous models since my appointment to Jaguar Design as I insist on only the post professional results and properties of the highest quality . . . Most recently [the petitioner] produced a stunning high polished finished for the presentation of the aluminum bodied XJ8 at the auto shows in Paris and Toronto.

Although [REDACTED] stated that the petitioner was "the best and most experienced automotive paint and surface technician in Europe," the petitioner submitted no documentation to indicate how his role in the finished product was a significant factor in the "concept" for which the vehicles were recognized or was a factor in the recognition of these vehicles for their respective awards. Additionally, while [REDACTED] stated that the Vanquish won a concept award at the 1998 Detroit Auto Show, the petitioner submitted no documentation to establish that painting and finishing factored into the vehicle winning the award. While a "best in show" award, such as the one [REDACTED] stated that he won for the 2001 Cadillac "Cien," could possibly encompass the painting and finishing of the vehicle, the petitioner submitted no documentation to establish the factors that were considered in making this award.

In a June 1, 2007 letter, [REDACTED] stated that an "automobile that is entered into world-class competition must have a perfect finish." He further stated:

I respectfully suggest that the role of surface finisher and painter absolutely is critical to the organization that presents a concept car or street rod for judging in competition. It simply is the case that, without an extraordinary finish and paint job, a concept car or street rod entered into competition will not receive due consideration at all.

Nonetheless, the evidence submitted does not indicate that the awards, which appear to be based on the design theories embodied in the proposed production of the cars, included the painting and finishing of the model product. The evidence does not establish that the petitioner 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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted copies of articles from publications that discuss the cars on which he has done the finishing and painting or articles about [REDACTED] or [REDACTED]. These articles are not primarily about the petitioner or his work. An article in the January 9, 2002 issue of *Autocar* provided "a behind-the-scenes" tour of Futura as it prepared a model of one car for a show; however, the article is not primarily about the petitioner or his work. Additionally, the petitioner submitted no documentation that *Autocar* is a major trade publication or other major media.

The evidence does not establish that the petitioner meets this criterion.

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

The wording of this criterion indicates it is intended for those in the visual arts such as sculptors and painters. The petitioner claimed to meet this criterion based on the display of the cars and motorcycles that he has finished and painted in auto shows and bike shows. However, the evidence does not establish that the petitioner's work was the focus of the show. These shows are designed to display the vehicle designs and concepts. There is no evidence that the petitioner was individually recognized for his work in these displays. The petitioner's evidence does not establish 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.*

To meet this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner stated that he was the Head of Finishing and Highlighting at Futura. In his February 16, 2004 letter, [REDACTED] stated:

[The petitioner] excels at completing, finishing and painting clay, fiberglass, ureol and epoxy resin models, drawing upon extensive technical knowledge and exceptional artistry. As the Head of all Finishing and Highlighting at Futura, he works from blueprints and CAD renderings to plan, direct and execute the multiple processes through which rough models are transformed into beautiful and realistic representations . . . [He] relies on sketches, renderings and interactions with the designer to plan the surface tension, finishing and highlighting that are of the utmost importance to show models of the caliber demanded by the world's major automotive designers. He also schedules the construction of the model (which usually is needed quickly) and commissions the fabrication of "brightware," such as lights, hardware, windshields, etc.

. . .

Because clay often is chosen as the modeling medium for a design where changes are anticipated, clay models generally have not been painted. However, [the petitioner] has invented a peel-off surface finish and paint for clay, and now Futura is able to produce such a high-quality on clay that designers commission the paint job and use the clay model for display.

The results of [the petitioner's] efforts have been models, show cars and concept cars that have pleased Chief Designers at the world's most important automakers, and that routinely have won for them the highest honours at premiere auto shows. . . .

. . .

[The petitioner], who is renown throughout the European automotive industry for his achievements in finishing and paint, particularly is esteemed for the effects he achieves with false wood. Discussions of his accomplishments often focus on a set of custom limousines built by Rolls-Royce for the Sultan of Brunei and by Bentley for the Diamond Jubilee (2002) of Her Majesty Queen Elizabeth II. Since these automobiles were to be one-of-a-kind, and cost approximately US\$3 million each,

Futura was commissioned to fabricate clay models for preliminary design inspections by their future owners. These autos were very large, more than 21 feet long, requiring 8 tons of clay to construct. [The petitioner] completed the finishing and exterior painting so expertly that the Sultan's assistant, [REDACTED], and the Queen believed they were viewing the finished car. This was particularly the case with the interiors, where [the petitioner] created an illusion of burl walnut veneering so convincing that the head of the Woodwork Department at Bentley and the Director of Rolls-Royce did not believe did not believe that they were paint!

As discussed above, [REDACTED] states that he has worked with the petitioner on many award-winning vehicles and that he is "well known in the industry for my high standards. [The petitioner] is one of the few people in the automotive business that can not only meet them but also exceed them."

[REDACTED], a designer with [REDACTED] stated in a January 29, 2004 letter, that he worked with the petitioner at [REDACTED]

I worked with [the petitioner] on a variety of automotive model building projects, including full size exteriors, full size interiors, scale models, and master models.

...

In 2001, [the petitioner] finished and painted both interiors and exteriors for the prototype of the limousine-sized State Car that Bentley built for the Diamond Jubilee of HRH Queen Elizabeth II, and which was used for all of the events that marked her 50 years on the throne throughout 2002. For this model, which was presented to members of the Royal Family for evaluation, [the petitioner] prepared and painted both interiors and exteriors. He performed a [similar] service between 1993 and 1995 whilst we completed together two complete exterior and interior proposals for vehicles subsequently built in short production runs for the Sultan of Brunei. Not only were these prototypes so well finished by [the petitioner], both inside (including faux-wood veneers) and out, that they were mistaken for the production vehicles. But also the quality of finish that [the petitioner] achieved was then used as the benchmark for all other design agencies that Bentley were working with across Europe.

In my time at Bentley we would often work with some of the most renowned design agencies in Europe. However on a number of occasions we specifically had to use [the petitioner's] extraordinary skills by flying tom to these agencies (indifferent countries) so that we could be sure of [achieving] world class results by using his outstanding abilities.

In an undated letter, [REDACTED] Design Studio and Model Manager for Bentley Motors, stated that Futura Design "is internationally respected as one of the world's automotive modeling and engineering firms," and that "[a]t one time or another, nearly all of the world's top automakers

have contracted with Futura to produce first-rate clay models or concept vehicles for auto shows.” He further stated:

[The petitioner] has provided finishing and painting services for my best projects, including “Project Diamond,” which produced the ceremonial limousine for the Queen.

[He] prepared and painted the mock-ups for a new Bentley corporate logo that was developed in 2002. . . . which was unveiled at the Geneva Auto Show that year, [and] now graces all Bentley cars and accessories.

[The petitioner] has in my opinion an unrivalled knowledge in Automotive Design and Concept paint technology and has pioneered new paint techniques for Design model build and presentation. One example I would like to single out as mentioned above was the Ceremonial Limousine “Project Diamond[.]” We presented this vehicle to the Queen personally at Windsor Castle and again at Buckingham Palace and the quality of the paint finis undoubtedly played a major part in her acceptance. Paint and paint technology are paramount at Bentley Motors and we sit at the very top of the automotive industry in this respect[.] [The petitioner] is the only external Partner comparable and must surely sit at the top of his profession.

In his March 12, 2004 letter, stated:

[The petitioner’s] work over the past 20 years has been critical to the achievement of ever more perfect design models – models that are a necessary function of the automotive design process. . . . [The petitioner] is universally recognised within the automotive world as a leader in this field. He is innovative and a perfectionist.

Throughout his career, [he] has been employed in the UK by [REDACTED] based in Birmingham. A company of high repute responsible for building [many] of the best known concepts cars over the past 15 years. During his time at Futura, [the petitioner] has provided invaluable expertise in design consultation, the forming and highlighting of surfaces and the application of paint for many of the worlds leading automotive manufacturers.

Jaguar Design must present models of the highest standards at all times reflecting the quality of the finished product. [The petitioner] is our natural choice as a body finisher and painter. Without question he is one of the top 2 or 3 practitioners of automotive model surface forming and painting in the world.

In a January 28, 2004 letter,  
Limited, stated:

a retired Model Manager for Jaguar Cars

In approximately 1990, I requested that Futura Design Ltd, a U.K. company specialising in building high quality, one off show cars, build an accurate representation of a "Concept Car," produced as a statement of design concepts to be emulated in future Jaguar production cars. From that date until my retirement, I continued to request Futura exclusively for these projects.

While there were a number of reasons for my consistently choosing Futura, one obvious and very important one was [the petitioner], who leads Futura's surfacing and painting operations. The surface forming, finishing and painting of Jaguar prototype and concept cars always has to be "the best[. The petitioner] consistently accomplishes "the best".

The evidence sufficiently establishes that the petitioner meets this criterion. Not only has he served as Head of Finishing and Highlighting for a company distinguished in its field for that particular work, he also performed in a critical capacity for other distinguished companies such as Bentley Motors and Jaguar. We withdraw the director's determination to the contrary.

Other comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.*" [Emphasis added]. In response to the director's request for evidence (RFE) dated April 18, 2007, the petitioner provided a letter from [REDACTED] who opined that the ten regulatory criteria "are not suited" to the petitioner's field of endeavor and proposed other criteria that he thinks are more appropriate. These include:

1. Evidence that the alien has been engaged in the critical role of surface finisher and painter in service to a set of the world's automotive companies.
2. Evidence that the concept cars, models, and street rods that the alien has finished and painted have been well-received at the top international auto shows.
3. Evidence of recognition of extraordinary ability in surface finishing and painting by the world's top automotive designers, model makers and restorers.

However, the petitioner has not shown that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation. [REDACTED] suggestions merely change the wording of the regulations and tailor the petitioner's specific evidence to fit within his specified boundaries. The petitioner submitted several letters of recommendation attesting to his expertise in his field and opining that he is among the small percentage of those at the very top of his field; however, the petitioner offers no new evidence

that would fit within this provision. We note further that we find the petitioner has performed *in* a leading or critical role for organizations that have a distinguished reputation, a criterion that simply rewords in his list.

The petitioner provided no evidence to establish that the following criteria are inappropriate to his field of endeavor:

1. 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.

The petitioner initially alleged that he meets this criterion. However, he failed to submit evidence to substantiate his claim. Mr. ██████ asserts that the petitioner's field "does not maintain its own publications." However, the criterion does not require the petitioner to submit evidence only from trade publications within his field but from "other major media." These media can be major newspapers or magazines. We note that, with his petition, the petitioner submitted documentation to support his claim from various media including *Autocar*, *Time*, *Street Rod Builder*, *Drag Race and Classic Review*, *Car and Driver*, *EVO*, *Fast Bikes*, and *Cycle World*. While we make no finding that these publications constitute major media or major trade publications, it is obvious that the petitioner believes these publications are relevant to his work and that he was not confined to presenting documentation from trade publications limited to his field of endeavor.

2. 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.

asserts that the petitioner's profession does not "employ esteemed panels to evaluate work product." On appeal, counsel asserts:

[The petitioner's] work product is evaluated at auto shows and antique car conventions, where independent panels composed of automotive journalists other experts judge a vehicle according to lists of aesthetic and engineering criteria. Members of [the petitioner's] profession do not participate as judges in such evaluations.

However, nothing in the record supports either ██████ statement or those of counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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

██████████ asserts that automotive painters and finishers would not share their contributions, as they “jealously guard their top-secret technical and artistic breakthroughs.” Counsel asserts that the “many original artistic and technical discoveries made by [the petitioner], such as new methods of surfacing or painting, are trade secrets that he has closely guarded,” and thus this criterion is not applicable to the petitioner’s field. However, the regulation does not require that the petitioner reveal his trade secrets. It is sufficient that the petitioner establishes that his techniques were of major significance to his field. The petitioner made no claim, and submitted no evidence, that his techniques were of major significance in painting and resurfacing. However, the petitioner’s failure to submit evidence of this criterion does not suggest that it is inappropriate to his field.

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

Counsel asserts that “[a]s there is no professional association for members of [the petitioner’s] field, it would be very difficult to obtain accurate information regarding the salaries of individuals who are similarly employed.” Counsel again submits no documentation to support his assertion. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Further, comparison of the petitioner’s salary in relation to others in the field can be obtained from sources other than an association. We note that none of the petitioner’s references indicated that he was highly compensated for his work with the various companies.

As the petitioner has not established that the regulatory criteria set forth in 8 C.F.R. § 204.5(h)(4) do not readily apply to his case, the regulatory language precludes the consideration of comparable evidence in this case.

Documentation in the record indicates that the alien was the beneficiary of an approved O-1 nonimmigrant visa petition. While USCIS has approved an O-1 nonimmigrant visa petition filed on behalf of the beneficiary, that prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the beneficiary’s qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of*

*Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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

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

Review of the record, however, does not establish that the petitioner has distinguished himself as an automotive surface finisher and painter 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 her field. The evidence indicates that the petitioner is a talented automotive surface finisher and painter who is very much in demand, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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

**ORDER:** The appeal is dismissed.