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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services



B2

DATE: **AUG 08 2012**

Office: TEXAS SERVICE CENTER

FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

The petitioner’s priority date established by the petition filing date is August 19, 2010. On February 14, 2011, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued her decision on June 13, 2011. On appeal, the petitioner submits a statement on the Form I-290B indicating that a brief and additional evidence would follow within 30 days of the appeal; however, the AAO has not received a subsequent brief or additional evidence. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established her eligibility for the classification sought.

I. LAW

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 H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Area of Expertise

On Part 6 of the petition, the petitioner indicated that the proposed employment would be as a professional Netball Player/Coach. Counsel's brief accompanying the initial petition and in response to the RFE described the petitioner's achievements both as a competitor and as a coach. An alien must intend to continue to work in her area of expertise. Section 203(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Performing as competitor and coaching are based on different skillsets. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (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, [REDACTED] 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. The petitioner's coaching achievements occurred in 2001 and 2002. As a result, the petitioner cannot demonstrate *sustained* acclaim as a coach. Thus, her achievements as a coach will not serve to qualify her for the immigrant classification sought.

B. Evidentiary Criteria²

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien be the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner provided qualifying evidence under this criterion in the form of several team awards from 1993 – 1996 as a member of the Republic of Ireland Netball Association (RINA) Senior Club Division, [REDACTED] United States of American Netball Association (USANA) championship, [REDACTED] her selection to the United States of America (USA) National Netball Squad, her selection to the East Coast Jaguars, her

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

award as the most valuable player (MVP) [REDACTED] American Federation of Netball Associations (AFNA), and being the most valuable player [REDACTED] the MINC 10th Anniversary Tournament. The director determined that the petitioner met the requirements of this criterion. The AAO withdraws the director's determination as it relates to whether the petitioner's selection to the two teams constitutes a prize or award as contemplated by the regulation. The AAO also withdraws the director's determination as it relates to whether the MVP award itself is a *nationally* or *internationally recognized* award for excellence in the field. The AAO departs from the director's determination under this criterion for the reasons outlined below.

Regarding the team awards from 1993 – 1996 as a Senior Club Division member of RINA, the petitioner must demonstrate that the award she received garnered national or international recognition. The petitioner participated as a Senior Club Division member in what appears to be the association that was formerly the national governing body of netball in Ireland. This fact is insufficient to meet the plain language requirements of this criterion. The AAO will not presume the national or international recognition of a prize or an award from the national scope of the competition without evidence demonstrating the award actually received recognition at least on a national level. National and international recognition results, not from the issuing authority, but through the awareness of the accolade in the field at the national or international level. Such recognition can occur through several means; for example, through media coverage. The only evidence from the period of 1993 through 1996 relating to the national or international recognition of one of the awards is in the form of a photograph of the petitioner's team and caption in a March 4, 1994 newspaper, the *Evening Herald*. The photo indicates the petitioner's team won the All-Ireland Senior title. While this is not the exact title of the petitioner's league, it appears to relate to the 1993 Premier Division League championship. The petitioner provided no information relating to the circulation or the distribution data of the *Evening Herald* and thus, the petitioner may not rely on the *Evening Herald* to establish that this award is nationally or internationally recognized.

The petitioner failed to submit any evidence to demonstrate that the following achievements are nationally or internationally recognized prizes or awards: (1) the 2008 Agape Annual Netball Tournament, (2) the 2009 USANA championship, (3) the 2009 Ros Coffey Award issued by the club for which the petitioner played, and (4) the [REDACTED]. As such, these awards will not satisfy the plain language requirements of this criterion.

Regarding the most valuable player [REDACTED] the petitioner provided a photo of the award and a team photo, but she failed to provide evidence to demonstrate that she actually received this award. This evidence also suffers the same evidentiary shortfall as the above evidence; specifically, the record is deficient of evidence establishing that this award enjoys national or international recognition.

The petitioner submitted a letter from [REDACTED] and from [REDACTED] as evidence relating to her selection to the two netball teams. Although the petitioner established the existence of a formal selection process through a review panel, being selected to perform on a team is not commensurate with receiving a prize or an award for

excellent performance in the field. As the selection to both teams is not a prize or an award as contemplated by the regulation, the petitioner cannot demonstrate eligibility relying on this form of achievement.

Regarding the MVP award [REDACTED], the question is not whether the sport, league, team, or tournament in which the petitioner performed are nationally or internationally recognized; instead the focus is on the award that documented the petitioner's MVP status. The evidence the petitioner provided in support of her eligibility under this criterion consists of:

- A photo of the award, which does not bear the petitioner's name;
- An email from [REDACTED] indicating the petitioner won the award;
- A photo with caption from the New York Netball website noting the petitioner's receipt of the award; and
- A letter from [REDACTED] c. confirming the petitioner's receipt of the award.

The evidence, when considered as a whole, demonstrated that the petitioner was the recipient of the award. It is apparent that as the award is issued for excellence in the field, as it is for the most valuable player of the tournament. The remaining question pertains to whether the award is nationally or internationally recognized. National and international recognition results, not from the individual who granted the award nor from the organization under which the award was issued, but through the awareness of the accolade in the eyes of a nation or of a group of nations. This can occur through several means; for example, through media coverage. The only evidence that the petitioner provided related to the level at which this award is recognized either nationally or internationally is in the form of an article posted on *The West Indian American* website. The record, however, contains no evidence that this website is a trade publication in netball, or otherwise reflective of the recognition of this award in the field.

Even if the AAO were to conclude that this MVP award is qualifying evidence under this criterion, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of "awards" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

Consequently, the AAO withdraws the director's determination as it relates to this criterion as the petitioner has not submitted evidence that meets the plain language requirements of this criterion. Even if the AAO accepted that the petitioner's awards in the 1990s were qualifying based on coverage of the league in the *Evening Herald*, the petitioner would meet only this single 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.

This criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must primarily be about the petitioner and the contents must relate to the petitioner's work in the field under which she seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner claimed the evidence relating to this criterion consists of an article from *The West Indian American* website, a 2010 article from the *Wall Street Journal*, a Netball America marketing document, and press releases and publications from [REDACTED]. The director determined that the petitioner failed to meet the requirements of this criterion. On appeal, counsel asserted that numerous articles in which the petitioner's games "were annotated." Counsel asserts that netball is not "widely-popular among the general public" and that, therefore, the articles about the petitioner's games are sufficient. Counsel cites no legal authority for the implication that the AAO can waive the requirement that the published material be "about" the petitioner and appear in professional or major trade publications or other major media.

The director noted articles from the *Evening Herald* in her decision, but did not reference the evidence counsel identified in the initial filing brief. As the director pointed out, the *Evening Herald* articles merely mention the petitioner but the articles are not about her. As previously noted, the article must be about the petitioner rather than merely including information about an event in which she participated. See generally *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). Additionally, the petitioner provided no evidence or analysis to support the position that the *Evening Herald* is a professional or major trade publication or other major media.

The article from *The West Indian American* website briefly discussed the petitioner's receipt of the MVP award; however, the article is not about the petitioner. Additionally, the record contains no evidence asserting *The West Indian American* website is a form of major media or one of the other

publication types required by the regulation. In reference to the *Wall Street Journal* and the Netball America marketing evidence, neither form of evidence is published material that is primarily about the petitioner. It is also important to note that the evidence related to the *Wall Street Journal* is actually promotional material from Netball America reflecting that a story about netball appeared on the *Wall Street Journal's* website wsj.com. Each document either merely mentions the petitioner within a single paragraph or contains a group photograph of the petitioner with a caption. Furthermore, the record lacks evidence to document that either form of evidence is one of the regulatory required publication types. Regarding the remaining evidence submitted, press releases do not constitute published material as these are not forms of independent, journalistic coverage with a listed author about the beneficiary relating to her work.

In view of the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of 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 petitioner claims to meet this criterion for the first time on appeal. The methods vary by which a petitioner can be notified of evidentiary requirements. For example, a petitioner is considered to be on notice through the specific requirements outlined within the regulations, or through various forms of communication from USCIS to a petitioner or applicant noting an evidentiary deficiency or requesting more evidence. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). The regulation at 8 C.F.R. § 204.5(h)(3) notified the petitioner of the specific filing requirements to demonstrate eligibility under the extraordinary ability classification. In addition, the instructions to the Form I-140 petition state that the petitioner “must attach evidence with [the] petition showing that the alien has sustained national or international acclaim” and then lists the ten regulatory criteria. Finally, the director issued a request for evidence listing all of the regulatory criteria. Therefore, the petitioner must claim every criterion that the petitioner would like to be considered before the director. In instances when the petitioner was notified of the types of evidence that are required to demonstrate eligibility and was afforded the opportunity to provide the evidence prior to the issuance of an adverse decision, new eligibility claims will not be considered on appeal. *See Matter of Soriano*, 19 I&N Dec. at 766.

If the petitioner would like for USCIS to consider claims to additional eligibility criteria, this must be accomplished through the filing of a new petition. *See id.* at 766. *Cf. Matter of Jimenez*, 21 I&N Dec. 567, 570 n.2 (BIA 1996) (finding that claims of eligibility for a waiver presented for the first time on appeal are not properly before the Board of Immigration Appeals and that the Board will not issue a determination on the matter.) Although the AAO maintains *de novo* review of appellate cases and a petitioner may supplement the record in regards to previous claims, a petitioner may not raise a previously unclaimed eligibility criterion on appeal. *Matter of Soriano*, 19 I&N Dec. at 766.

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

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

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

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for organizations or establishments as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."³ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

In response to the RFE, the petitioner amended her claims under this criterion and claimed her qualifying performances as:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The director determined that the petitioner failed to meet the requirements of this criterion. On appeal, counsel noted that the petitioner had submitted evidence of the petitioner's service as coach and team captain for winning netball teams.

As noted above, the petitioner cannot establish sustained acclaim as a coach and is primarily an athlete. Notwithstanding this determination, this decision will discuss the petitioner's coaching acclaim under this criterion. Regarding her championships as a coach [REDACTED] squad, the petitioner provided photographs of the trophies, and an undated article that failed to name the petitioner in a photograph caption. Additionally, it is not apparent from which publication this evidence originated. The record is lacking evidence to demonstrate the championships from the University College of Dublin that the petitioner claimed.

The petitioner also claimed that she served as the team captain for several Irish League teams, for the [REDACTED]. While the position of coach and the title of team captain connote a leading or a critical role simply through each position's title, to assume that the petitioner satisfied this criterion purely through the title or the position, would be overly speculative. The petitioner failed to provide evidence from any of the teams outlining the specifics of her duties that might document that she performed in a leading role in the hierarchy of the overall organization, or that might document the impact her performance had on the organization. Even if the AAO were to assume that the petitioner performed in a leading or critical role in accordance with the regulation, she did not provide evidence to demonstrate that any of the organizations or establishments claimed under this criterion enjoy a distinguished reputation.

Therefore, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

C. Comparable Evidence

The regulation at 8 C.F.R. § 204.5(h)(4) allows an alien to submit comparable evidence if the alien is able to demonstrate that he or she is unable to qualify for this classification because the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) are not directly applicable to the alien's occupation. It is the petitioner's burden to explain why the regulatory criteria are not readily applicable to her occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). The director discussed the petitioner's comparable evidence claims and found that the petitioner failed to demonstrate that comparable evidence was applicable to her case. On appeal, the petitioner does not contest the director's findings for comparable evidence or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

D. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence.

III. CONCLUSION

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or, given when the petitioner won her most significant awards, *sustained* national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁴ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

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; *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (citing *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966)). Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁴ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).