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U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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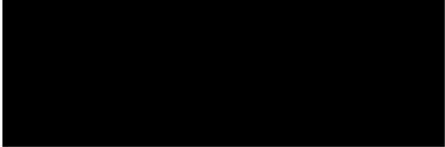
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DATE: JUN 13 2012 Office: TEXAS SERVICE CENTER FILE: [Redacted]

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:

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 with the field office or service center that originally decided your case by filing a 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 for the beneficiary as an “alien of extraordinary ability” in business, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim of the beneficiary 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 on behalf of the beneficiary under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submits a brief without additional evidence. Counsel also reiterates his previous comparison made in the initial filing and in response to the director’s notice of intent to deny between the beneficiary and █████, the lead singer █████. Counsel compares the beneficiary to █████ without referencing any evidence that compares the amount of money █████ has raised with that raised by the beneficiary. Regardless, the instant petition before the AAO is that of the petitioner on behalf of the beneficiary and not on behalf of █████. The AAO will only evaluate the evidence relating to the beneficiary. For the reasons discussed below, the AAO upholds the director’s ultimate conclusion that the petitioner has not established the beneficiary’s eligibility for the exclusive classification sought.

I. Intent to Continue to Work in the Area of Expertise in the United States

The AAO notes here that in Part 6 of Form I-140, Immigrant Petition for Alien Worker, the petitioner listed the beneficiary’s proposed job title as “Executive Director.” The duties listed in Part 6 include “[d]irect fundraising activities” and “[p]lan and direct public awareness, victim compensation and educational activities of petitioner.” In addition, the petitioner submitted a support letter further detailing the duties and the salary of the position of the Executive Director. Thus, the record reflects that the petitioner is seeking classification for the beneficiary as an alien of extraordinary ability for the position of Executive Director. As such, the AAO withdraws the director’s finding that it was not “established that the beneficiary was coming to the United States to work as a director of a nonprofit organization.”

However, the statute and regulations require the alien's national or international acclaim to be sustained and that he seeks to continue work in *his area of expertise* in the United States. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). It is by virtue of the alien's continued work in the area of expertise that the alien will benefit the United States. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). While the record reflects that the beneficiary is also skilled at "judging, authenticating and valuing rock and roll celebrity memorabilia," the duties of an executive director rely on a very different set of basic skills. Thus, they are not the same area of expertise. The AAO will not presume that serving as an executive director for a nonprofit falls within the area of expertise of an authenticator of rock and roll memorabilia. The AAO notes that the petitioner is a drunk driving awareness and victim's charity rather than one related to the preservation of rock and roll memorabilia or a related cause. While the AAO acknowledges the possibility of an alien's sustained national or international acclaim in more than one field, the petitioner must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." See 8 C.F.R. § 204.5(h)(5).

Although counsel asserts "[it] is due to the contacts and personal relationships that the beneficiary built with top line musical celebrities as an expert in rock and roll musical memorabilia...that gives the beneficiary his extraordinary ability and international acclaim in his occupation as Executive Director," the AAO will not presume that a rock and roll memorabilia authenticator with celebrity contacts enjoys individual acclaim as an executive director for a nonprofit charity. An individual's "contacts" and "personal relationships" are not, by themselves, a basis for a claim of extraordinary ability. Further, the beneficiary does not derive individual acclaim simply from association with "musical celebrities." Eligibility rests not on inference, but on extensive documentary evidence of sustained national or international acclaim. Section 203(b)(1)(A)(i) of the Act. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the petitioner's answers to the questions on Form I-140 and the submitted documentation, the record reflects that the petitioner intends for the beneficiary to continue to work as an executive director rather than in the rock and roll memorabilia arena. Thus, the petitioner must establish that the beneficiary's area of expertise, and the area in which he enjoys national or international acclaim, is as an executive director for a nonprofit. Ultimately, the petitioner must satisfy the regulatory requirements at 8 C.F.R. § 204.5(h)(3) through the beneficiary's achievements as a director of a nonprofit organization. As such, the AAO will not consider the evidence regarding the beneficiary's achievements in the rock and roll memorabilia arena.

II. 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

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).

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 on behalf of the beneficiary under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.*

III. ANALYSIS

A. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)

In response to the director’s notice of intent to deny, the petitioner, through its president, stated that “[the petitioner] will not take issue with the Service’s determination that [the beneficiary] has not met three of the criteria by which extraordinary ability is to be documented, as provided by 8 C.F.R. [§] 204.5(h)(3).” The petitioner also stated that “the evidence already submitted as exhibits to the Form I-140 petition should be found to be ‘other evidence’ adequate to establish [the beneficiary’s] extraordinary ability in fund raising for and promotion of educational and charitable purposes,” without providing any additional evidence to support the claim. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). On appeal, counsel asserts “the petitioner will support its claim that the beneficiary has demonstrated he possesses international acclaim and extraordinary ability in his occupation as Executive Director of a charitable organization by virtue of viewing the evidence submitted as ‘comparable evidence’ because the ten criteria listed in the regulation ‘do not readily apply to the beneficiary’s occupation.’”

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” only if the ten categories of evidence “do not readily apply to the beneficiary’s occupation.” Thus, it is the petitioner’s burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the alien’s occupation and how the evidence submitted is “comparable” to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). Several of the criteria are written in terms broadly applicable, even within the business community. 56 Fed. Reg. 60897, 60898 (Nov. 29, 1991). On appeal, counsel simply asserts that the petitioner “is unaware” of awards, memberships, events requiring a judge, artistic displays or commercial success in the occupation of charity fundraising. Thus, it is counsel’s position that the criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iv), (vii) and (x) are not readily applicable to the beneficiary’s occupation. Counsel acknowledges, however, that five criteria, 8 C.F.R. § 204.5(h)(iii), (v), (vi), (viii) and (ix) relating to published material, contributions of major significance, scholarly articles and high salary or other significantly high remuneration for services, are readily applicable to the beneficiary’s occupation.

The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that a sufficient number of the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the occupation of executive director for a charity. In fact, the petitioner submitted evidence with the original Form I-140 that specifically addresses four of the ten categories of evidence set forth in the regulation at 8 C.F.R. § 204.5(h)(3) and on appeal included an additional category as applicable, although it should be noted that the petitioner claimed that the judging criterion was no longer applicable. Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

B. Evidentiary Criteria

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

The director discussed the submitted evidence and found that the petitioner failed to establish that the evidence was qualifying. 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), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); see also *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

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.

On appeal, counsel asserts for the first time that the petitioner provided comparable evidence that “the beneficiary [is] in a ‘virtual association’ the very exclusive membership of which is determined by having a sufficiently close relationship to top line musical artist celebrities to be able to induce them to donate their valuable time to endorse and make appearances at charitable events.” The record contains photographs of the beneficiary with celebrities and letters from their agents. The evidence of this type that is dated predates the filing of the petition by several years.

The plain language at 8 C.F.R. § 204.5(h)(3)(ii) addresses associations in the alien's field (in this case nonprofit business administration) rather than “virtual associations” of celebrity acquaintances. USCIS may not utilize novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian*, 596 F.3d at 1221, citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir.2008). As previously stated above, where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. In addition, national or international experts in their disciplines or fields must judge admission to the association. The overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Even if the AAO were to agree that the beneficiary was a member of a "virtual association" in the beneficiary's field of fundraising, and it does not, the petitioner has not identified the national or international experts who judge membership in this "virtual association." Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "evidence of the alien's membership in associations" 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.²

As stated above, it is the petitioner's burden to demonstrate that membership requires outstanding achievements of its members, as judged by recognized national or international experts.

In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(ii).

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.

The director found that the petitioner satisfied the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The AAO finds that director erred in his finding. The plain language of the regulation requires published material in a professional or major trade publication or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³ The petitioner failed to submit any supporting documentation such as circulation

² See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *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).

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For

or distribution data to indicate that any of the material satisfied this requirement. The burden is on the petitioner to establish that the beneficiary meets every element of this criterion. Without documentary evidence demonstrating that these publications qualify as major media, the AAO cannot conclude that the petitioner meets this criterion. As such, the AAO withdraws the decision of the director for 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.

On appeal, counsel asserts that the beneficiary's appearances on "nationwide syndicated radio programs to evaluate, value and comment on rock and roll memorabilia" should be considered comparable evidence because he "promote[s] the charitable and educational work of [the petitioner]" during these appearances. Counsel also refers to a "televised documentary series" hosted by the beneficiary which "is an insider's trip through the private collections of rock and roll memorabilia." Counsel offers no further explanation of why these achievements should be considered comparable evidence of judging the work of other charity executives or executives in an allied field. As previously mentioned, the AAO will not consider evidence of the beneficiary's rock and roll memorabilia experience, as it does not relate to the beneficiary's extraordinary ability claim as the Executive Director for the petitioner, a drunk driving awareness and victim's charity.

In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iv).

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

While the petitioner did not make a claim under this criterion, the director discussed letters of reference as evidence under this criterion and found that the petitioner failed to establish that the evidence was qualifying. 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 1228 n. 2, *Hristov v. Roark*, 2011 WL 4711885 at *9 (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

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

The director found that "the petitioner did not submit any evidence that the beneficiary authored any publications that appeared in professional or major trade publications or other major media." On appeal, counsel states "the beneficiary, while working on his biography...has not yet published his biography." As the book has yet to be published, it cannot be considered here. Eligibility must be

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.

established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Moreover, counsel does not explain how the beneficiary's biography would constitute a "scholarly" article relating to charity fundraising.

In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vi).

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

On appeal, counsel asserts that the beneficiary plays a "leading role in guiding the petitioner's charitable and educational work" and a "critical role in the success of the petitioner's public awareness and fund raising efforts." While the AAO finds that the record contains sufficient documentary evidence that the beneficiary has performed in a leading or critical role for the petitioner, the petitioner failed to submit sufficient evidence to show that the petitioner has a "distinguished reputation," as requested by the director and as required by the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Although the record includes several mayoral proclamations, an email and photographs from an episode of the Dr. Phil show and other various photographs and documentation of the beneficiary with celebrities, counsel fails to explain how this or any other submitted evidence demonstrates that the petitioner has a distinguished reputation. For example, there is no information in the record regarding the selection process to receive a mayoral proclamation.

Furthermore, as previously discussed, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Therefore, even if the AAO found that the petitioner is an organization with a distinguished reputation, which it does not, the plain language of this regulatory criterion requires evidence of performing in a leading or critical role for more than one organization or establishment. The burden is on the petitioner to establish that the beneficiary meets every element of this criterion. Without documentary evidence demonstrating that the beneficiary has performed in a leading or critical role for more than one organization or establishment with a distinguished reputation, the AAO cannot conclude that the beneficiary meets this criterion.

In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(viii).

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

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish that the evidence was qualifying. On appeal, counsel simply asserts that "the petitioner conserves its financial resources for use in fulfilling its educational and charitable purposes and will pay the beneficiary only \$50,000 annually, at the beneficiary's choice," without providing any additional evidence or offering any additional arguments. Therefore, the AAO considers this issue abandoned.

See Desravines v. United States Attorney General, No. 08-14861, 343 F. App'x 433, 435 (11th Cir. 2009) (finding that issues not briefed on appeal are deemed abandoned).

C. Summary

As the petitioner did not submit qualifying evidence on behalf of the beneficiary under at least three criteria, the proper conclusion is that the petitioner has failed to demonstrate that the beneficiary satisfies the antecedent regulatory requirement of three types of evidence.

IV. CONCLUSION

Had the petitioner submitted the requisite evidence on behalf of the beneficiary 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 sustained national or international acclaim, especially through the date of filing in April 2010, 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 the beneficiary’s 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.

⁴ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. 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).