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



U.S. Citizenship  
and Immigration  
Services

Date: **JUN 20 2014**

Office: NEBRASKA 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the immigrant visa petition and the matter 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 education. The director determined that the petitioner had not met the requisite criteria for classification as an alien of extraordinary ability.

On appeal, the petitioner submits a brief and additional evidence. In the brief, the petitioner asserts that she meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(ii), (iv), and (viii).

### 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. 723 101<sup>st</sup> 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 our decision to deny the petition, the court took issue with our evaluation of evidence submitted to meet a given evidentiary criterion.<sup>1</sup> 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 our 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 we 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 we 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, we 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.*

## II. ANALYSIS

### A. Evidentiary Criteria<sup>2</sup>

*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 evidence submitted for this regulatory 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. When an appellant fails to offer argument on an issue, that issue is 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) (plaintiff’s claims abandoned when not raised on appeal). Accordingly, the petitioner has not established that she meets this regulatory criterion.

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<sup>1</sup> Specifically, the court stated that we 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).

<sup>2</sup> On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, no determination has been made regarding whether the petitioner meets the remaining categories of evidence.

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

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien’s membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

In the appeal brief, the petitioner asserts that she meets the requirements of this criterion through her appointment as director of the [redacted]. The petitioner points to the June 26, 2013 letter of support from [redacted] Deputy Chief of [redacted]

[redacted] Beijing, China, that stated:

I oversee more than 400 [redacted] [s] in 110 countries including the 93 [redacted] in the United States.

\* \* \*

[The petitioner] has surpassed many of her peers by the quality and quantity of her work leading the [redacted] at the [redacted]

\* \* \*

[A]ll directors of [redacted] including [the petitioner], are nominated and recommended by their home institution and approved by the board of directors consisted of senior academic or business leaders in the host institutions and their partner institutions in China. [redacted] directorship indicates an elite status of the appointed individuals. [The petitioner] is appointed to be the founding director for her expertise knowledge [sic] of Chinese and American education and culture and her extraordinary ability in leading international education where she skillfully blends critical components together.

Although [redacted] asserts that the petitioner was “appointed to be the founding director for her expertise knowledge [sic] of Chinese and American education and culture and her extraordinary ability in leading international education,” the personal qualifications of the petitioner are not relevant to this criterion. Instead, the petitioner must show that the [redacted] requires

outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. Moreover, the petitioner has not established that possessing an expert knowledge of Chinese and American education and culture, and demonstrating the ability to lead a multi-component foreign education program constitute outstanding achievements.

's assertions are unsupported by primary evidence of the 's specific membership requirements from a reliable source such as the organization's bylaws or constitution. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Further, if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Moreover, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795-796; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Absent documentation that primary and secondary evidence of the institution's specific membership requirements are either not available or nonexistent, 's letter cannot be relied upon as evidence. 8 C.F.R. § 103.2(b)(2).

Furthermore, the petitioner has not established that serving as a director at an institution that hosts a Confucius Institute constitutes membership in an association. Submitting documentary evidence reflecting the petitioner's managerial role with a particular organization without evidence reflecting that the petitioner is a member of an association that requires outstanding achievements of its members, as judged by recognized national or international experts, is insufficient to meet the plain language of the regulation. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires the petitioner to show "membership in associations in the field" rather than the petitioner's role as Director of the . The regulations contain a separate criterion for performing in a leading or critical role for organizations or establishments with a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii). The petitioner's role as Director of the appears more relevant to the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii) and will be further addressed there.

Finally, the plain language of the regulation requires "membership in associations" in the plural. The use of the plural 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 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. *Cf. Maramjaya v.*

USCIS, Civ. Act. No. 06-2158, 2008 WL 9398947, \*1, \*6 (D.D.C. Mar. 2008); *Snapnames.com Inc. v. Chertoff*, No. CV06-65, 2006 WL 3491005, at \*1, \*10 (D. Or. Nov. 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). Therefore, even if the petitioner had established that her leadership role for the [REDACTED] meets the elements of this regulatory criterion, the plain language requires evidence of the petitioner’s membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts.

In light of the above, the petitioner has not established that she meets this regulatory 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.*

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 issue, therefore, is considered abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9. Accordingly, the petitioner has not established that she meets this regulatory 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 director determined that the petitioner did not establish eligibility for this criterion.

The petitioner’s appeal brief points to the June 21, 2013 letter written to her from [REDACTED] Interim Dean and Professor of Finance, [REDACTED] Ohio, that stated:

I’m writing to once again thank you for your excellent work as an external reviewer of the [REDACTED]. As part our university requirement for all programs and in keeping with our signed agreements with [REDACTED] and [REDACTED] we conducted a 5 year program review with input from experts from inside and outside of the university. The program review in which you participated last year played an important role in our decision to continue our co-sponsorship of the Institute as well as a motivation for making several significant changes in the direction of the Institute.

In my former role of Associate Provost and Associate Vice-President for Academic Affairs, I was charged with organizing the program review including the selection of the internal and external reviewers. I made the selection of external reviewers after considering dozens of possibilities and selected from a roster of the directors of the very best run [REDACTED] in the U.S.

[REDACTED] is of the one top ranked universities in the country in its level of participation by its students in international programs. We value the [REDACTED] as an important part of our strategy of having a comprehensive approach to the internationalization of our students. The program review process and your role in it are essential components for the assurance of our successful implementation of this strategy.

In deciding the next best steps for the Institute, we relied heavily on the high quality report that you and the other external reviewer, Dr. [REDACTED] from the [REDACTED] produced. It's clear that you used the day-long visit interviewing faculty, staff and administrators to excellent advantage. Your recommendations were both circumspect and judicious. It was especially fortuitous that you were able to incorporate a meeting with representatives from our [REDACTED] partner school, [REDACTED] as part of the program review process.

In addition, the petitioner submitted a May 1-2, 2012 "[REDACTED] Program Review External Reviewers' Schedule" that documented the petitioner's participation. The petitioner also submitted an April 12, 2012 e-mail from Mr. [REDACTED] requesting the petitioner's participation as an external reviewer. The preceding evidence is sufficient to demonstrate that the petitioner meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Accordingly, the petitioner has established that she meets this regulatory criterion.

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

The director determined that the petitioner did not establish eligibility for this criterion.

The petitioner's "Self-Statement for EB1 Appeal" asserts that the director's determination regarding her published articles was inaccurate. The petitioner points to her 2007 article in [REDACTED] entitled "[REDACTED]" as Published in [REDACTED] and her March 2013 article in [REDACTED] entitled "[REDACTED]". Although we agree with the petitioner that the preceding evidence constitutes scholarly articles in professional publications, the March 2013 article was published subsequent to the petition's October 11, 2012 filing date. Eligibility must be 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). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, the petitioner's March 2013 article in [REDACTED] cannot be considered as evidence to establish her eligibility at the time of filing.

Further, the plain language of this criterion requires the petitioner's "authorship of scholarly articles in the field, in professional or major trade publications or other major media" in the plural. As the

submitted evidence shows that the petitioner had authored only one scholarly article in a single professional publication at the time of filing, the petitioner has not established that she meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vi). Cf. *Maramjaya v. USCIS*, 2008 WL 9398947 at \*12; *Snappnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*10.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

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

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) for the reasons outlined below.

The petitioner submitted an October 8, 2012 letter from Dr. [REDACTED] Senior Vice Provost and Dean of Academic Administration, [REDACTED] stating that the petitioner served as Director of the [REDACTED]. The petitioner’s appellate submission includes documentation that provides additional information regarding her role as Director of the [REDACTED]. For instance, the petitioner submitted documents indicating that she prepared the institute’s 2012-2016 strategic plan, compiled the institute’s Chinese Language and Culture Curriculum, selected teachers, prepared institute reports, planned events, and offered guidance to students (such as [REDACTED] who received a [REDACTED]). Accordingly, the submitted evidence shows that the petitioner performed in a leading role for the [REDACTED].

In addition, the petitioner submitted an October 5, 2012 letter from Dr. [REDACTED] Emeritus Professor, [REDACTED] stating that the petitioner served as Associate Director of the [REDACTED]. Dr. [REDACTED]’s letter, however, does not identify the specific duties performed by the petitioner as Associate Director or her responsibilities, or explain how the petitioner’s position fit within the overall hierarchy of the office. The “Associate Director” job title alone does not establish the nature of the petitioner’s role as either leading or critical. Dr. [REDACTED]’s letter falls short of specifying how the petitioner contributed to the [REDACTED] in a way that was significant to the office’s outcome or what role she performed in the office’s activities. Again, if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Furthermore, the petitioner has not submitted sufficient documentary evidence showing that [REDACTED] and [REDACTED] have a distinguished reputation. The petitioner submitted an October 7, 2012 letter from Dr. [REDACTED] Chinese Language Supervisor of the [REDACTED] stating:

[The petitioner] was first introduced to me by the educational consul in [redacted] in New York. I met [the petitioner] when she was invited . . . to attend [redacted] in the United Nations in April 2011.

Under [the petitioner's] leadership, the [redacted] is one of best in North America and the world. The creative endeavors [the petitioner] engages in are exciting and highly productive.

Dr. [redacted] asserts that "the [redacted] is one of best in North America and the world," but does not point to any specific evidence to support his claim. USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165.

The petitioner also submitted a letter from [redacted] Wire Editor, [redacted] stating:

[The petitioner] and I have discussed her interest in writing a column for the newspaper where I work – a reflection of how she seeks to bolster cultural understanding in the community.

[The petitioner] is the only director the [redacted] has ever known. During her nearly 4 years in that capacity, the institute has established Chinese language/culture education programs in seven area schools and provided 10 teachers from China. She also has coordinated visits from about 20 international delegations in the last six years, more than half from China.

\* \* \*

On a personal note, I have attended some local activities associated with the [redacted] Thousands of people turn out each year for the Dragon Boat races – a very successful fund-raiser for general education. Public speakers and musical performances arranged by the institute and [the petitioner] have been popular as well.

Mr. [redacted] comments briefly on the activities of the [redacted] but the information provided is not sufficient to demonstrate that the institution has a distinguished reputation relative to other academic institutions' foreign language and cultural education programs. Additionally, the letters from Mr. [redacted] and Mr. [redacted] are insufficient to establish that the institute has a distinguished reputation beyond those writers, who both had direct professional interactions with the beneficiary.

In addition, the petitioner submitted an October 10, 2012 letter with the Form I-140, Immigrant Petition for Alien Worker, that listed internet links for news stories posted on the websites of the [redacted] (the student-run newspaper for The [redacted])

[REDACTED], and the [REDACTED]. The petitioner, however, failed to submit copies of the news stories. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. Furthermore, the self-serving nature of the news stories originating from the [REDACTED] and its student newspaper is not sufficient to demonstrate that the university's [REDACTED] and [REDACTED] have a distinguished reputation. There is no objective documentary evidence showing that the [REDACTED] and [REDACTED] have a distinguished reputation.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

#### B. Summary

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

#### IV. CONCLUSION

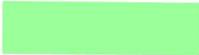
The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Even if the petitioner had 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. Although we conclude 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, we need not explain that conclusion in a final merits determination.<sup>3</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories 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.

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<sup>3</sup> The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). 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).



In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.