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

(b)(6)

U.S. Citizenship and Immigration Services

Date: MAR 2 6 2014 Office: TEXAS SERVICE CENTER

IN RE:

APPLICATION: 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, 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 business, specifically as an international business lawyer, 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 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.

On appeal, counsel asserts that the director, in adjudicating the petition, demonstrated inattention to the facts of this case resulting in error. Furthermore, counsel asserts that the petitioner established all regulatory and statutory requirements as an alien of extraordinary ability.

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.*

II. ANALYSIS

A. Standard of Review

Counsel for the petitioner asserts that the director's decision includes a factual error in the findings under 8 C.F.R. § 204.5(h)(2) and the error reflects a lack of attention to the facts of the pending petition. Counsel thereby requests that a new adjudicator or supervisor conduct an entirely new and independent

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[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).

review of the petition. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Taco Especial v. Napolitano*, 696 F.Supp.2d 873, 879 (E.D. Mich. 2010). Accordingly, the appeal will be adjudicated based on the full record of proceedings, including all submitted documentary evidence.

B. Evidentiary Criteria[3]

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The director determined that the petitioner did not submit evidence establishing the requirements of this criterion. On appeal, counsel asserts that the petitioner presented evidence of seven nationally or internationally recognized awards but that the director only discussed three of the awards in the denial decision. The petitioner submitted as evidence:

(1) An internship for a District Court in China;
(2) Selection to
(3
(4
(5) Participation as a competitor in the
(6) The petitioner's role with the and
(7) Selection to Australia's

Counsel, in the initial submission of evidence and on appeal, focuses on the selectivity of the listed scholarships, internships and other activities. However, participation in a competition, a program (either as a participant or as an organizer), a professional school, an internship or a training program, does not constitute a prize or an award, regardless of the level of selectivity involved. Admission into an academic program, competitions associated with an academic program, internships, and training programs are all part of the training process toward a future field of endeavor. Much of the submitted evidence under this criterion reflects the petitioner's participation in various prestigious activities or programs, but such participation cannot be recognized as prizes or awards for excellence in the field of endeavor. *See Rijal v. USCIS*, 772 F.Supp.2d 1339, 1345 (W.D. Wash. 2011) (noting that Congress entrusted the decision of defining and classifying awards to the administrative process). is the only distinction that does not consist of the petitioner's participation in a program or training activity. However, academic scholarships and student awards are not prizes or awards in the petitioner's field of endeavor because academic study is training for a future field of endeavor, rather than a current field of endeavor. explains that the scholarship is based on academic accomplishments, publications, and school and community activities. As such, the scholarship does not recognize excellence in the field.

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

The record also does not establish that the field nationally or internationally recognizes any of the items submitted as prizes or awards for excellence in the field. On appeal, counsel maintains that the support letter from , asserts that the internship with the District Court in China and the were nationally recognized awards. However, letter, in relevant part, states that "[the] Court . . . is regarded as the most prestigious District Court in China." The prestige of the Court where the petitioner did her internship does not demonstrate that the internship is a nationally recognized prize. In addition, Professor letter, in referencing the training program notes that it was nationwide and was "organized and sponsored by the Chinese Ministry of Education." That the scope of selection for the participants was nationwide and that a government agency sponsored the program does not amount to national recognition of the internship as an award for excellence in the field. Counsel further asserts on appeal that the support letter from Association, explicitly documents the international recognition of the letter reflects that according to the Australian Consulate, the sponsoring organization of the program, the is a "select and unique group of young leaders from around the world." Again, the global scope of the selection of leaders to participate in the program is not equivalent to international recognition of the program as an award for excellence in the field.

For all of the foregoing reasons, the petitioner has not established that she meets this criterion.

> *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.* 8 C.F.R.§ 204.5(h)(3)(ii).

The director determined in his decision that the petitioner did not meet the requirements for eligibility under 8 C.F.R. § 204.5(h)(3)(ii). Counsel asserts on appeal that the petitioner submitted sufficient evidence to meet this criterion. The petitioner must submit evidence satisfying every element of this criterion to meet the plain language requirements of this criterion.

The petitioner submitted the following evidence for consideration under this criterion:

(1) Membership in the Wisconsin Bar;
(2) Membership in the New York Bar;
(3) Participation in the 2008 national convention for the Association;
(4) Membership in and
(5) Selection as a V

Membership into state bars generally requires, as the petitioner's counsel notes, a degree in the field and passage of a bar examination. Such requirements are the minimal qualifications for allowing an attorney to practice law in a particular state and minimal professional requirements do not rise to the level of outstanding achievements. On appeal, counsel asserts that the petitioner's admission into the Wisconsin Bar is an outstanding achievement based on the competitiveness and prestige of the educational institution where she received her degree. There is nothing in the record to indicate that admission into the Wisconsin bar requires that a member receive a degree from a competitive or

prestigious educational institution or that attendance at such an institution is in and of itself an outstanding achievement. Also, the members of the law faculty of the are not the individuals who judge admittance into the Wisconsin Bar. Therefore, any recognition of that institution's faculty as being experts in the field has no bearing on whether the petitioner demonstrated that membership to the Wisconsin Bar requires judging by recognized experts. Similarly, the record does not establish that being a member of the New York bar requires outstanding achievements beyond the minimal qualifications to practice as a lawyer in New York. Counsel on appeal asserts that the low passage rate for that state's bar examination and an even lower passage rate for foreign educated lawyers are sufficient to demonstrate that admission to the bar is an outstanding achievement. First, counsel relies on the February pass rates for all takers of the examination and foreign educated applicants. The pass rates for first-time takers in July, however, are much higher, 79 percent for those taking the New York Bar examination for the first time in July 2009. Regardless, the plain language of the regulation does not contemplate individual hardships and circumstances in defining outstanding achievements. It remains that obtaining the credentials necessary to practice in one's field, even if competitive, is not an outstanding achievement in that field. Therefore, the two memberships in the state bars do not meet this criterion.

Regarding the 2008 national convention for the National Asian Pacific American Bar Association, counsel submits evidence of the petitioner's one time participation in this event, not the membership in the bar association, for consideration under the criterion. Counsel asserts that participation in this event constitutes as an outstanding achievement in light of the competitive selection process to participate. Nonetheless, regardless of the level of selectivity of the process, a one-time event is not equivalent to an association and participation in such an event does not equate to membership. Similarly, the evidence in the record indicates that the is a program and not an association. Moreover, there is insufficient evidence showing that membership to the requires outstanding achievements. While the Australian Consulate describes the as "a select and unique group of young leaders from the world," there is insufficient evidence documenting a requirement of outstanding achievements. Furthermore, USCIS need not rely on an entity's own vague claims of prestige. *Cf. Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (finding that USCIS need not rely on the promotional material of a publisher).

Finally, the record contains evidence showing that the selected the petitioner as one of the organization's Vice Presidents for her achievements. First, a role for an association is not a membership in an association. The regulation at 8 C.F.R. § 204.5(h)(3)(viii) sets forth a separate criterion pertaining to leading or critical roles. Second, notwithstanding the petitioner's individual selection process as an officer, the documentary evidence does not indicate that the requires outstanding achievements of its members. Additionally, the record contains no evidence that there is separate category of membership for officers of the organization or a requirement that to be an officer of the association, a member must demonstrate outstanding achievements.

Accordingly, the record supports the director's conclusion that the petitioner has not established that she meets the plain language requirements of 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.* 8 C.F.R. § 204.5(h)(3)(iii).

The director determined that the petitioner's evidence of an article in the *Brooklyn Daily Eagle* did not satisfy the requirements of 8 C.F.R. § 204.5(h)(3)(v). The record includes documentary evidence attesting that the *Brooklyn Daily Eagle*'s circulation consists of 10,000 readers per day for the print edition and approximately 250,000 readers per month for the on-line edition. The director properly concluded that such numbers are consistent with a local publication and, as such, the *Brooklyn Daily Eagle* does not qualify as major media pursuant to the regulation. Accordingly, the director properly determined that the petitioner did not satisfy the regulatory requirements and did not meet 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.* 8 C.F.R. § 204.5(h)(3)(iv).

The director determined in his decision that the petitioner met the criterion pursuant to 8 C.F.R. § 204.5(h)(3)(iv). As noted by the counsel on appeal, however, the petitioner never claimed to meet this criterion and the record of proceedings does not include documentary evidence in support of the petitioner's eligibility under this criterion. Instead, the director referenced evidence pertaining to a different field that does not appear in the record.[4] Accordingly, the AAO withdraws the director's determination in this regard.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The director determined that the evidence of record is insufficient to meet this criterion. On appeal, counsel asserts that the director erred in focusing on whether the petitioner's contributions made an impact on the overall field. Counsel asserts that such a focus is more appropriate to an analysis relating to a petition for a scientist and because the petitioner is a practicing lawyer, that USCIS should assess her contributions with regard to the impact to individual clients. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6, 8 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

More specifically, counsel asserts that the director did not consider all six letters of support found in the record from the following individuals attesting to the petitioner's contributions: (1)

[4] The remainder of the director's decision discusses the petitioner's evidence in depth; thus, this single inadvertent reference to evidence in a different field is not indicative of the director's failure to properly review the record.

The letters of support from praise the petitioner's work and potential. However, they all describe the petitioner's excellence as a student or a student intern during her educational and training process to become an international business lawyer.

For exampl writes:

> I asked her to help me with several of my research projects. One of them was a research project for my local province (which is analogous to a state in the U.S.) about juvenile justice system reform. The research and analysis she did was very advanced and brand new in China. . . . The final result of the project is a book:

Although the petitioner assisted with the research for Professor book as a student researcher, she did not document that she is a credited co-author of the book. As such, the petitioner has not documented that her role on the book significantly contributed to the impact of the book in the field. Although Professor praises the quality of the petitioner's research and compliments her for the work she did as a judicial intern, Professor does not explain how this research rises to the level of significant contributions in the field at large. Much of the praise in the letters compares the petitioner to her student or intern peers, and not as a practitioner in the field of endeavor. Finally, the petitioner has not documented the impact of this juvenile justice book on her area of expertise, business law.

Similarly, letters praise the petitioner's work as being of outstanding quality, but there is nothing in the letters to suggest that the wider field beyond her immediate supervisors took note of her work as contributions in the field.

With regard to the letter from Director , she notes that the petitioner has had a positive impact on her organization, the and praises the petitioner's organizational skills that positively influenced several events and her relational skills. Director writes, "She is an extraordinarily talented lawyer, superbly versed in the laws, languages, and culture of both China and the United States. To succeed as an international business lawyer, though, those talents and skills alone are not enough. A lawyer must also be able to build vibrant and lasting professional relationships." The skills that Director discusses relate to the petitioner's effectiveness and potential for success in the field, but do not constitute contributions in the field at large.

The letter from her current employer observes that "[the petitioner's] work has greatly improved our firm's work product, and her effect on the field will grow substantially the longer she practices." The potential for future influence and the current positive impact on the work of her current employer are insufficient to meet the plain language requirements for the criterion for original contributions in the field.

The above letters are all from the petitioner's collaborators and immediate circle of colleagues. While such letters are important in providing details about the petitioner's role in various projects,

they cannot by themselves establish the impact of the petitioner's contributions beyond her immediate circle of colleagues. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).[5] The petitioner's letters generally provide examples of how the petitioner's contributions influenced the specific organization they represent, but do not provide examples of contributions that influenced the field.

Finally, counsel requests on appeal that USCIS consider the petitioner's article, "A Study of Forgery and Its Serious Issues" as a significant contribution in the field. Counsel asserts that the article is included in numerous academic databases and that one third-party article has relied upon the petitioner's article. The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the regulation views contributions as a separate evidentiary requirement from scholarly articles.[6] While documentation of an extensive citation record or comparable evidence of reliance in the field would be probative evidence relating to this criterion, evidence of reliance by one subsequent article and the mere inclusion in databases is insufficient to demonstrate that the article is an original contribution of major significance in the field.

Thus, the petitioner has not established eligibility under 8 C.F.R. § 204.5(h)(3)(v).

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The director concluded that the petitioner did not meet this criterion. The record contains evidence of one published article the petitioner authored, which counsel admits on appeal. Nonetheless, counsel asserts that based on its potential impact, this one article satisfies the regulatory requirement. USCIS may not utilize novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *See Kazarian,* 596 F.3d at 1221, *citing Love Korean Church v. Chertoff,* 549 F.3d 749, 758 (9th Cir.2008). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires, irrespective of potential impact, evidence of "scholarly articles" 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) use 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

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[5] In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

[6] Publication and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "*major* significance." *Kazarian v. USCIS,* 580 F.3d at 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reaffirmed its holding that the AAO did not abuse its discretion in finding that the alien had not demonstrated contributions of major significance. 596 F.3d at 1122.

have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.[7]

Accordingly, because the record does not include evidence of multiple scholarly articles, the director did not err in concluding that the petitioner did not establish her eligibility pursuant to 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.* 8 C.F.R. § 204.5(h)(3)(vii).

The director concluded that the petitioner met the requirements of 8 C.F.R. § 204.5(h)(3)(vii) based upon the record of proceeding, including the petitioner's role as Vice President of the Chinese Business Lawyers Association. The evidence of record supports the director's conclusion that the petitioner meets this criterion.

B. Summary

The petitioner has failed to submit sufficient relevant, probative evidence to satisfy the 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 sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.[8] Rather, the proper conclusion is that the petitioner has failed to satisfy the

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[7] *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).

[8] 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);

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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.

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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).