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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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Date: Office: TEXAS SERVICE CENTER

FILE:

MAY 14 2012

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 is an institution of higher education/university. It seeks to classify the beneficiary as an outstanding professor or researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as an assistant professor of finance. The director determined that the petitioner had not established that the beneficiary had attained the outstanding level of achievement required for classification as an outstanding professor or researcher.

On appeal, the petitioner submits a brief. The petitioner has not submitted any further evidence on appeal. For the reasons discussed below, the AAO concurs with the director that the record fails to establish that the beneficiary enjoys international recognition as outstanding in the academic field. Specifically, when we simply "count" the evidence submitted, the petitioner has submitted qualifying evidence under two of the regulatory criteria as required, judging the work of others and scholarly articles pursuant to 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). As explained in the final merits determination, however, much of the evidence that technically qualifies under these criteria reflects routine duties or accomplishments in the field that do not, as of the date of filing, set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria.¹ *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

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):

* * *

(B) Outstanding professors and researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

¹ The legal authority for this two-step analysis will be discussed at length below.

- (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
- (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
- (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

II. International Recognition

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists the following six criteria, of which the beneficiary must submit evidence qualifying under at least two.

- (A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;
- (B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;
- (C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;
- (D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;
- (E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or
- (F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under a similar classification set forth at section 203(b)(1)(A) of the Act. *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. 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.² 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)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both 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," 8 C.F.R. § 204.5(h)(2), and "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)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

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.³ While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

² 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) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(D)) and 8 C.F.R. § 204.5(h)(3)(vi) (comparable to 8 C.F.R. § 204.5(i)(3)(i)(F)).

³ The classification at issue in *Kazarian*, section 203(b)(1)(A) of the Act, requires qualifying evidence under three criteria whereas the classification at issue in this matter, section 203(b)(1)(B) of the Act, requires qualifying evidence under only two criteria.

III. Analysis

A. Evidentiary Criteria⁴

This petition, filed on May 24, 2011, seeks to classify the beneficiary as a professor or researcher who is recognized internationally as outstanding in his academic field. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(i)(3)(i).

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation

The petitioner has submitted a citation record for the beneficiary, containing 6 total citations to the beneficiary's work.⁵ The regulation at 8 C.F.R. § 204.5(i)(3)(i)(C) requires evidence of published material about the beneficiary's work. A review reveals that the published material which cites the beneficiary's work is primarily about the author's own work, or recent work in the field generally, and not about the beneficiary's work. As such, it cannot be considered published material about the beneficiary's work. However, the beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F3d at 1122. The citation history will be considered below in our final merits determination.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(C).

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field

The petitioner submitted evidence that the beneficiary has reviewed manuscripts for the following publications:

of Business in Developing Nations. The petitioner also submitted evidence that the beneficiary has reviewed manuscripts for several international conferences.

⁴ The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

⁵ The petitioner has also submitted a copy of a press release, published in the June 19, 2011 edition of the *Natchez Democrat*, concerning the beneficiary's manuscript "Approaching the Asian elephant: Understanding business-to-business relationships in India." However, publication of this article occurred after the date of filing the employment-based immigrant visa petition on May 24, 2011, and cannot be considered evidence of the beneficiary's eligibility after that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

This evidence qualifies under the plain language of the criterion set forth at 8 C.F.R. § 204.5(i)(3)(i)(D). Pursuant to the reasoning in *Kazarian*, 596 F.3d at 1122, however, the nature of these duties may be and will be considered below in our final merits determination.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

As evidence relating to the beneficiary's original scientific or scholarly research contributions to the academic field, the petitioner has submitted reference letters from nine individuals, (six of whom are from the beneficiary's immediate circle of coauthors and collaborators). The plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) does not require that the beneficiary's contributions themselves be internationally recognized as outstanding. That being said, the plain language of the regulation does not simply require original research, but an original "research contribution." Had the regulation contemplated merely the submission of original research, it would have said so, and not have included the extra word "contribution." Moreover, the plain language of the regulation requires that the contribution be "to the academic field" rather than an individual laboratory or institution.

We acknowledge that the beneficiary has authored several journal articles in the academic field, and has presented his work at several international conferences and symposia, as is mentioned in the reference letters. If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles. In addition, even if we considered the original nature of the beneficiary's research to qualify it under the criterion at 8 C.F.R. § 204.5(i)(3)(i)(E), and we do not, whether or not the contributions are indicative of the beneficiary's international recognition in the field is a valid consideration under our final merits determination. (We will consider the articles under 8 C.F.R. § 204.5(i)(3)(i)(F)).

██████████, Interim Dean at the petitioner's school of business where the beneficiary is an assistant professor of finance, states that the beneficiary's research has important implications "in determining whether the biotechnology sector, domestic or foreign, provides risk diversification benefits." He states that the beneficiary's research "provides evidence that new and emerging sector's financial performance can be affected by dominance of country specific factors." He also states that the beneficiary's research findings have important practical implications, showing that the transmission of global economic shocks "are not symmetric and that downturns should be scrutinized even more heavily than upturns" by policymakers and investors with internationally diversified portfolios. ██████████ fails to acknowledge that he is one of the beneficiary's coauthors. He does not explain how others in the field are applying the beneficiary's research findings.

██████████ professor of economics and finance at The University of New Orleans, states that he is familiar with the beneficiary's research, although he does not indicate how he learned of the beneficiary's work. He states that the beneficiary's research contributions include presenting evidence of a relation between mortgage finance companies and real estate investment trusts, and presenting evidence that "markets which exhibit R & D maturity, intellectual property right law

protection and have developed capital infrastructure are less likely to misprice their biotechnology sector.” [REDACTED] does not explain how others in the field are applying the beneficiary’s research results.

[REDACTED] professor of finance at The University of Texas – Pan American, states that the beneficiary took several of his classes when the beneficiary was a doctoral student at The University of Texas – Pan American. He states that the beneficiary “is on his way to making a name for himself in [the] research community in modeling return performance, and understanding dynamic linkages and contemporaneous risk assessment.” He states that the beneficiary’s work “is beginning to have an impact in areas such as asset pricing and international financial market performance,” although he does not give any examples of independent institutions of higher education/universities using the beneficiary’s work.

[REDACTED] is a professor of finance at Philadelphia University in Pennsylvania. He states that he first became aware of the beneficiary’s work when he read the beneficiary’s paper on currency hedging strategies and interest rate arbitrage. He states that the beneficiary “has continuously argued that regional business conditions matter.” He states that the beneficiary’s research findings, implying that profitable arbitrage opportunities seem to exist in the currency markets of Brazil, Russia India and China, are important information for practitioners and academics interested in international currency markets. He also states that the beneficiary’s research findings, regarding the financial markets of the Middle East and North Africa (MENA) are important information for investors and academicians. [REDACTED] does not explain how others in the field are applying the beneficiary’s research findings.

[REDACTED] associate professor of finance at University of Houston – Downtown, does not indicate how he learned of the beneficiary’s work. [REDACTED] fails to acknowledge that he is one of the beneficiary’s coauthors. Thus, [REDACTED] is not an independent reference. He states that the beneficiary’s research findings have “broad managerial implications for practitioners and academicians who are trying to understand the role of risk especially in context of international investment and portfolio performance.” [REDACTED] does not explain how others in the field are applying the beneficiary’s research results.

[REDACTED] professor of business at [REDACTED], states that he became aware of the beneficiary’s work when the beneficiary presented a paper at an Academy of International Business seminar in 2005. [REDACTED] fails to acknowledge that he is one of the beneficiary’s coauthors. Thus [REDACTED] independent reference. He states that the beneficiary “is known for his work on modeling returns performance, and understanding dynamic linkages and contemporaneous risk assessment.”⁶ He states that the beneficiary’s research findings have important implications for policy makers, investors, practitioners and academicians, although he does not provide examples of how the beneficiary’s findings are being applied in the field.

⁶ Drs. Spillan, Hassan and Soydemir use this almost identical language in their letters of reference.

[REDACTED] a research professor of economics and finance at University of Texas – Pan American, states that he has known the beneficiary for 10 years, but he does not indicate how he learned of the beneficiary's work. He states that the "beneficiary's research interests lie in the area of understanding asset pricing and contemporaneous risk management analysis" and that the beneficiary "develops empirical models of pricing to understand the returns behavior and volatility transmission mechanisms for assets and financial markets."⁷ He does not provide examples of specific individuals or entities that have relied upon the beneficiary's models or research results and how they are already being applied in the field, as would be expected of a contribution to the field as a whole.

[REDACTED] a professor of finance at [REDACTED] states that he is familiar with the beneficiary's work, but he does not indicate how he learned of the beneficiary's work. He states that the beneficiary's research has made a significant impact on our understanding of international currency markets, by implying that with the introduction of the Euro, hedging may now be advantageous. He does not provide examples of how the beneficiary's research findings are being applied in the field.

[REDACTED] states that the beneficiary serves on the Mayor's Advisory Committee on Technology. He states that the beneficiary's research "helped in a much-needed update on the City's computerized accounting system" and that the beneficiary "is involved in drafting a financial plan to study the feasibility of a new web domain for the City." While the beneficiary's work has benefitted the City of Natchez, [REDACTED] does not state that the beneficiary's research has contributed to the field.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* 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).

The opinions of experts in the field are not without weight and have been considered above. United States Citizenship & Immigration Services (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 letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *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"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165

[REDACTED], below, use this almost identical language in their letters of reference.

(Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions have influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁸ Considering the letters in the aggregate, the record does not establish that the beneficiary's research is original or can be considered a contribution to the field as a whole.

In light of the above, the AAO finds that the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(i)(3)(i)(E).

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

The petitioner submitted evidence that the beneficiary has authored several journal articles in the academic field. The petitioner has also submitted evidence that the beneficiary has presented his work at several international conferences and symposia.

Thus, the petitioner has submitted evidence that qualifies under 8 C.F.R. § 204.5(i)(3)(i)(F).

In light of the above, the petitioner has submitted evidence that meets two of the criteria that must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the petitioner submitted evidence to meet the criteria set forth at 8 C.F.R. §§ 204.5(i)(3)(i)(D) and (F). The next step, however, is a final merits determination that considers whether the evidence is consistent with the statutory standard in this matter, international recognition as outstanding. Section 203(b)(1)(B)(i) of the Act.

B. Final Merits Determination

It is important to note at the outset that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)).

⁸ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, 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).

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*, 596 F.3d at 1122. The petitioner submitted evidence that the beneficiary has reviewed manuscripts for the *Journal of Economics and Business*, *Journal of International Business Studies (JIBS)*, *The Financial Review*, *Journal of Financial and Economic Practice*, *Journal of Multinational Financial Management*, *Academy of International Business*, *International Academy of Business and Economics*, *Academy for Global Business Advancement*, and *Journal of Business in Developing Nations*. The petitioner also submitted evidence that the beneficiary has reviewed manuscripts for several international conferences. The AAO cannot ignore the fact that financial journals are peer reviewed and rely on many financial analysts to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without other evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, or received independent requests from a substantial number of journals, the AAO cannot conclude that the beneficiary's judging experience is indicative of or consistent with international recognition.

Regarding the beneficiary's original research, as stated above, it does not appear to rise to the level of a contribution to the academic field as a whole. Demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research is not useful in setting the beneficiary apart in the academic community through eminence and distinction based on international recognition. 56 Fed. Reg. at 30705. Research work that is unoriginal would be unlikely to secure the beneficiary a Master's degree, let alone classification as an outstanding researcher. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on January 28, 2010 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* www.bls.gov/oco/ocos066.htm. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

Further, [REDACTED] independent references, do not indicate that they learned of the beneficiary's work through the beneficiary's international reputation. Indeed, the record lacks evidence that a significant number of members of the academic field outside of the beneficiary's immediate circle of colleagues are even aware of his work.

The beneficiary's citation history is a relevant consideration as to whether the evidence is indicative of the beneficiary's recognition beyond his own circle of collaborators. *See Kazarian*,

596 F.3d at 1122. The petitioner has submitted several articles containing citations to the beneficiary's work. The record contains no evidence that the beneficiary's articles have been widely cited or other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition. This moderate level of citation is not sufficient to demonstrate that the beneficiary's published work has been widely cited or other comparable evidence that demonstrates that the beneficiary's publication record is consistent with international recognition.

In light of the above, the final merits determination reveals that the beneficiary's qualifying evidence, participating in the widespread peer review process and publishing articles that have not garnered widespread citations or other response in the academic field, does not set the beneficiary apart in the academic community through eminence and distinction based on international recognition, the purpose of the regulatory criteria. 56 Fed. Reg. at 30705.

The petitioner has shown that the beneficiary is a talented professor of finance, who has won the respect of his collaborators, employers, and mentors, while securing some degree of exposure for his work. The record, however, stops short of elevating the beneficiary to the level of an alien who is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

IV. Conclusion

Review of the record does not establish that the beneficiary is internationally recognized as an outstanding researcher or professor. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(B) of the Act and the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.