U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 01 244 59842 Office: California Service Center Date: FEB 27 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Elizabeth Hayward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 the arts. The director determined the petitioner had not established that she qualifies for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on May 21, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a visual artist. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, counsel claims, meets the following criteria.

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

The petitioner submitted a letter from the Kempton Park Tembisa Administrative Unit, stating that the petitioner was selected to participate in an art exhibition competition for the Kempton Park Tembisa Fine Arts Award in 1994. The letter further stated: "The standard of entries is very high and out of the approximately three hundred entries each year only one hundred are chosen for the exhibition." No first-hand evidence of the petitioner's receipt of this local organization's award has been submitted. Selection to participate in an art exhibition (along with ninety-nine other artists) does not reflect the receipt of a nationally or internationally recognized award for artistic excellence.

The petitioner also submitted a certificate showing that she received an Education Africa Presidential Award (1995) for services provided to Project Literacy. Information provided by the petitioner states: "Project Literacy is a 24 year old government organization working in the field of adult basic education and training. Project Literacy reaches 2500 adult learners annually at centers in Gauteny and Middelburg." The significance of this award to the field of art is not self-evident.

As further evidence of the award, the petitioner submitted a letter from Gregory Plant, Project Leader, Project Literacy. Gregory Plant coordinates the development of educational materials in the subject domain of Economic and Management Sciences for Project Literacy. He states:

> Project Literacy trains teachers/facilitators as well as learners... on a countrywide basis. The company has done groundbreaking work in the field of education in South Africa. This work was recognized in that the company was presented an award, by former President Nelson Mandela, for excellence in education and recognizing the role which Project Literacy has played.

[redacted] further states that Project Literacy approached the petitioner "to do the illustration for their Business Economics Course" and that "[h]er contribution to the success of these books was significant." His letter compliments the petitioner for "her ability to translate abstract concepts into easily understood, clear line drawings which added great educational value."

On appeal, counsel states: "In 1995, [the petitioner] was the only candidate in the country to win such a prestigious award that President Nelson Mandela conferred upon her." The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). While former South African President Nelson Mandela may have bestowed an award upon Project Literacy recognizing that institution's important work in education, the record contains absolutely no evidence to show that the petitioner's award was "conferred upon her" by Nelson Mandela. Rather, the "Presidential Award" (bearing an image of Nelson Mandela) was presented by the Education Africa organization. The record contains no information from Education Africa detailing the selection criteria for the award or indicating the

number of annual recipients.

Based on the information provided, it is apparent that the Education Africa Presidential Award reflects institutional, rather than national or international, recognition. It has not been shown that the petitioner's award for contributing illustrations to an educational textbook represents a nationally recognized award for artistic excellence (rather than being an institutional award for services provided to Project Literacy). The petitioner does not appear to have competed against top artists for the award, nor has it been demonstrated that the award is viewed throughout South Africa as a significant artistic achievement.

In sum, the petitioner has failed to establish that she has received artistic awards that enjoy significant national or international stature.

> *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 petitioner offered letters from various associations describing their membership requirements and verifying the petitioner's individual membership status.

In order to demonstrate that membership in an association meets this criterion, the 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, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, a membership in an association that evaluates its membership applications at the local chapter level would not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association would not satisfy this criterion, because the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence showing that she is a Design Member of Design South Africa. Membership information from this association regarding Design Membership states: "Any individual who has a recognized three-year design qualification from an academic tertiary educational institution, and has been practicing for a minimum of three years may apply."

The petitioner also submitted evidence showing that she is a Senior Member of the Art Department Guild of South Africa. Information from this organization states that Senior Membership is open to "[a]ny persons with eight years of experience in whatever branch of the Art Department, or at least four years experience as Head of Department."

The petitioner also submitted evidence showing that she was a member of the Performing Arts Worker Equity from 1996 to 1998, but offered no evidence of its membership requirements.

The petitioner provided evidence of her membership in Toastmasters International, but offered no evidence of its specific membership requirements. We note here that this organization is devoted to public speaking rather than the visual arts.

In response to the director's request for evidence, the petitioner submitted evidence of her membership in Women Painters West (admission approval letter dated "Winter/Spring 2002") and the Association of British Theatre Technicians (2002 Membership Card). This evidence came into existence subsequent to the petition's filing. *See Matter of Katigbak*, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

On appeal, counsel asserts that the petitioner "is a member of the Society of British Theatre Designers," but the petitioner offers no evidence to support this assertion. A letter to the petitioner from the Society of British Theatre Designers (dated March 4, 2002) describes its application process, stating: "You must get two recommendations from the co-workers who are already members of the Society of British Theatre Designers and/or the Association of British Theatre Technicians and one of those must be from the category for which you are applying." We acknowledge the petitioner's membership in the Association of British Theatre Technicians (subsequent to the petition's filing); however, counsel's claim that the petitioner held membership in the Society of British Theatre Designers is not supported by the record. Counsel has offered no supporting evidence to support his assertion. *See Matter of Laureano, Matter of Obaigbena, and Matter of Ramirez-Sanchez, supra.*

Information from Women Painters West states: "Women Painters West was founded in Laguna Beach in 1921 as a non-profit organization under the name of 'The Woman's Art Club of Southern California.'" Membership in this organization appears limited to female artists residing in California. There is no indication that the petitioner's membership in this local art organization (subsequent to the petition's filing) satisfies the regulatory demand that memberships be decided at the national or international level.

In sum, the petitioner has not established that her memberships require outstanding achievement in the visual arts or that she was judged by national or international experts in consideration of her membership.

> *Published materials 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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien would not earn acclaim at the national level from a local publication.

The petitioner submitted evidence showing that her artwork has been featured in A Directory of South African Contemporary Art, Volume I (1998), A Directory of Southern African Contemporary Art Practices, Volume II (1999) on page 153, and The Collector's Guide to Art and Artists in South Africa: A Visual Journey into the Thoughts, Emotions and Minds of 558 Artists (1998) on page 172. None of these promotional publications devote more than five sentences to the petitioner or her artwork. The editors do not single out the petitioner as superior to the hundreds of other artists featured in those same volumes nor do the publications offer a favorable written critique of the petitioner's works. The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and publications that only briefly mention the petitioner do not satisfy this criterion.

On appeal, counsel states that the petitioner's business economics textbook illustrations also satisfy this criterion. Textbook illustrations prepared by the petitioner, however, do not qualify as "published materials about the alien."

We further note that the extent of the distribution of these publications has not been provided. Without evidence of significant national distribution, the petitioner has failed to show that the publications mentioned above qualify as major media.

> *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.*

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as a coach, instructor, teacher, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, the petitioner must demonstrate that her sustained national or international acclaim resulted in her selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level and involve accomplished professionals in the petitioner's field. For example, judging a national art exhibition would carry far greater weight than judging a student art competition at a local university.

In response to the director's request for evidence, the petitioner provided a "Certificate of Appreciation" in recognition of services the petitioner rendered to the National Arts Council of South Africa as an "Advisory Panelist" from 1997 to 2001. The record, however, contains no information from the National Arts Council detailing the petitioner's specific role or activities. It has not been shown that the petitioner judged the work of other artists while serving as a panelist.

The petitioner also submitted a letter from Johan Van Heerden, Professor of Fine Arts, Technikon Pretoria, stating: "This is to confirm that [the petitioner] was asked to review, evaluate and judge the portfolios of artists seeking admission to our graduate program in 1996." Judging art students for admission into a graduate program or "provid[ing] a practical training program for 2nd year students" carries far less weight than would judging accomplished professional artists. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner provides no evidence that she has served as a juror for national or international level art exhibitions.

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

The petitioner submitted several witness letters, mostly from individuals who have collaborated on artistic or theatrical projects with the petitioner, commissioned or purchased her work, or encountered her through art exhibitions or participation in artistic associations. These letters describe the petitioner as a highly talented artist, but they provide no information regarding how the petitioner's artistic contributions have influenced the artistic field. The issue here is not the originality of the petitioner's artistic works, but, rather, whether her artwork constitutes a contribution of major significance to the artistic field. Original artistic submissions for display, exhibition, advertising, or theatrical productions are common among artists and do not set the petitioner apart from others in her field. We note the complete absence of articles published by renowned art critics that would bolster claims that the petitioner's work has significantly impacted her field. Christine Argillet-Kazandijan, a gallery owner in West Hollywood, asserts that the petitioner "is regarded as an influential artist," but the record does not indicate the extent of the petitioner's influence on other artists, nor does it show that any specific works by the petitioner are particularly renowned as works of contemporary art. The petitioner has not shown that her works have garnered widespread attention, command unusually high prices, or are in great demand among museum curators or gallery owners. Thus, we find little evidence to support the conclusion that the petitioner has made a contribution of major significance to her field.

The petitioner has offered letters from impressive experts whose opinions are important in the field of art (particularly some notable South African artists). For example, William Kentridge describes the petitioner as "an asset to the film and theatre industry in South Africa." Andre Naude states that the petitioner "has very successfully operated as a scenic painter and worked on major productions at the National State Theatre." Although the petitioner has attracted the favorable attention of these prominent artists, a simple comparison of their achievements with those of the petitioner shows that the petitioner has not amassed a record of accomplishment placing her at or near the top of her field. We cannot ignore that William Kentridge and Andre Naude appear to have earned considerably more acclaim than the petitioner in the field of art; their works have been shown at more distinguished venues and, unlike the petitioner, their artwork has been featured at numerous solo exhibitions. Also, they have won more significant awards for their work. Their artistic accomplishments, therefore, far exceed those of the petitioner. It should be noted that reputation by association cannot suffice to establish that the petitioner herself enjoys national or international acclaim.

The witness letters provided generally describe the petitioner as a talented artist, but they do not distinguish the petitioner's work as far superior to that of other competent artists. Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition would carry greater weight than new materials prepared especially for submission with the petition. The Service is not questioning the credibility of the petitioner's witnesses, but is looking for evidence that the petitioner's work has garnered considerable attention beyond her direct acquaintances. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

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

The petitioner submitted evidence showing that she provided business economics textbook illustrations for Project Literacy. The plain wording of the regulation, however, clearly calls for "evidence of the alien's authorship of scholarly articles in the field." The petitioner's textbook illustrations would not satisfy this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Allowing any artist whose work has been submitted for public display to satisfy this criterion would defeat the restrictive nature of Section 203(b)(1)(A) of the Act, thus rendering this criterion meaningless. The petitioner must show that her artistic exhibitions and showcases elevate her to the very top of her field at the national or international level.

Counsel asserts that the petitioner's business economics textbook illustrations for Project Literacy satisfy this criterion. The wording of this criterion, however, strongly suggests that it is intended for the public "display" of visual artwork (such as sculptures and paintings), rather than for published textbook illustrations viewed only by the business students and teachers using those textbooks. The petitioner's published illustrations have been already been addressed under a previous criterion.

A letter from the Kempton Park Tembisa Administrative Unit stated that the petitioner was among one hundred artists selected out of three hundred entrants to participate in the competition for the Kempton Park Tembisa Award.

A letter from Henry Vergon, Deputy Directory, French Institute of South Africa, states that in 1996 the petitioner was invited to take part in their exhibition entitled "The 24 Hour Happening." Henry Vergon states that the event provided young artists "the opportunity to gain international exposure."

A letter from Andrew Mesterman, Chairman, Board of Trustees, Ruth Browse School of Art, states that the petitioner was invited to take part in their group exhibition, "South African Art Today."

The petitioner also submitted evidence indicating that she was among 230 artists selected out of six hundred entrants to participate in a competition presented by the Momentum Life Insurance Company and the Northern Transvaal Branch of the South African Association of Arts at the Pretoria Art Museum in 1993.

Counsel states that the petitioner was an entrant in the annual "New Signatures Art Competition" (1992) sponsored by Sasol, a large industrial company in South Africa, and the Pretoria Arts Society. Counsel also notes that the petitioner was selected to participate in the Philips Corporation's "Networking Art" competition.

On appeal, the petitioner submits evidence showing that she participated in an exhibition among sixteen other artists at the Don O'Melveny Gallery (West Hollywood, CA) in July 2002 and that she was selected to participate in the Florence Biennale in 2003. These events occurred subsequent to the petition's filing. *See Matter of Katigbak, supra.*

We cannot ignore that virtually all of the exhibitions in which the petitioner participated occurred in areas close to where the petitioner was residing. It must be stressed that an artist does not satisfy this criterion simply by arranging for his or her work to be displayed; otherwise most, if not all, visual artists would satisfy this criterion, rendering it meaningless. Statements from counsel indicate that many of the "exhibitions" showing the petitioner's work facilitated the sale of her artwork. Display of the petitioner's work for purposes of sale carries significantly less weight than does museum display, strictly for the purposes of public viewing. To hold otherwise would be to qualify every artist who allows his or her work to be seen prior to purchase, thus defeating the restrictive purpose behind this criterion. The record also indicates that the petitioner displayed her work among dozens, if not hundreds, of other artists and it has not been shown that these exhibitions were limited to artists with national or international reputations. Nor has the petitioner demonstrated her participation in a show or exhibition devoted solely or largely to the display of her individual artwork. In sum, the petitioner has not shown that her exhibitions enjoy a national reputation or that participation in her exhibitions was a privilege extended only to top artists in her field.

On appeal, counsel argues that this criterion does not mandate the alien's work to be shown exclusively. We note, however, that it has not been shown that the other artists featured with the petitioner at her exhibitions enjoyed national or international reputations. Counsel further states: "It is very rare that artists' works are exclusively displayed because the costs are too prohibitive." Counsel, however, does not elaborate on this statement or offer any evidence to support his conclusion. In fact, information provided in support of the petition directly contradicts counsel's claim. For example, information about William Kentridge reflects that he has been featured in dozens of solo exhibitions, both internationally and throughout South Africa. We further note that Andre Naude "had approximately 30 solo and 50 group exhibitions" (national and international). A simple comparison shows that their artistic achievements far exceed those of the petitioner. Based

on the information provided, it seems apparent that cost is not a prohibitive factor for solo exhibitions by artists of sustained acclaim.

Counsel then argues that the petitioner's "art and set designs" for event promotions and theatrical productions are evidence that her work was "exclusively showcased." Although it is not immediately apparent that commercial artwork (for event promotions) and theatrical backdrops would apply to this criterion, we will address counsel's argument. Counsel cites the petitioner's stage design for *La Cage Aux Folles* and artwork for the BMW Automobile Five Series Launch as examples of the petitioner's work being "exclusively showcased." Counsel's argument, however, would apply to any theatrical set designer or commercial artist providing promotional services to a business client and does not elevate the petitioner above other artists working in those same specialties. We acknowledge the petitioner's theatrical stage designs for productions such as *Crazy for You* and promotional artwork for large companies such as South African Breweries, but there is no evidence to distinguish the petitioner's efforts as superior to those of other artists pursuing similar work. For example, while the petitioner may have worked as a set designer on well-known theatrical productions, no evidence has been submitted to show that the productions received a prize for stage design or that published critical reviews lauded the petitioner's artistic backdrops.

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

In order to establish that the alien performed in a leading or critical role for an organization or establishment with a distinguished reputation, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment.

On appeal, counsel argues that the petitioner played a leading and critical role for the Performing Arts Council of the Transvaal ("PACT"), a national theatrical performing arts organization established by the South African Government. Counsel states that PACT is one of four councils in the country and that it is the most prestigious because it offers a combination of ballet, opera, theater and dance. Counsel further states that PACT "is only one of the few councils capable of hosting full-scale productions of classics" and that the petitioner "was one of four scenic artists employed by PACT." The record, however, contains no supporting documentation to demonstrate that PACT is a distinguished organization when compared to the other councils nor evidence from a PACT official verifying that the petitioner performed in a leading or critical role for their organization. The assertions of counsel do not constitute evidence. *See Matter of Laureano*, *Matter of Obaigbena*, and *Matter of Ramirez-Sanchez*, *supra.*

Counsel then describes the petitioner's involvement in projects from several companies that contracted the petitioner to provide artistic services for various promotions and events. These companies included South African Breweries, Young & Rubican, Ogilvy & Mather, Graphicor, Tiger Oats, Virgin, Eksom, BMW, Benson & Hedges, and The Sun International Group. The record shows that the petitioner provided artistic services to these companies, but there is no evidence to suggest that she played a leading or critical role in their organizations, particularly when

she was not a direct employee and her work was only temporary or contractual. The petitioner offers no evidence from any of these companies to support her claim that she satisfies this criterion. The record contains a few letters from some of the companies listed above, but the information provided fails to establish that the petitioner has ever supervised or overseen other individuals within those organizations. Further, the record does not indicate that the petitioner has consistently exercised substantial control over creative or business decisions executed on behalf of those organizations.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

On appeal, counsel acknowledges that this criterion is "tailored to the performing arts" and "does not apply to [the petitioner]."

The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the field. The regulatory criteria describe types of evidence which the petitioner may submit, but it does not follow that every artist whose works have been displayed at an exhibition, or whose artwork has appeared in print, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. In this case, the petitioner has failed to demonstrate that she meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself as a visual artist to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.