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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

SEP 10 2003

File: WAC-02-228-50750 Office: California Service Center Date:

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)

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 sciences. 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.

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 Bureau regulation at 8 C.F.R. § 204.5(h)(3).

The director stated that even if an alien "does fulfill" three of the regulatory criteria, it does not necessarily establish that the alien has sustained national or international acclaim. We interpret the director's language to mean that the petitioner submitted documentation that related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. We concur that a petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim. The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a bioinformatic developer. 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, she claims, meets the following criteria.

> *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 submitted a membership certificate for the Santa Clara University Chapter[1] of Sigma Xi, a letter confirming her membership in the American Society for Biochemistry and Molecular Biology (ASBMB), and a membership certificate for the Society of Environmental Toxicology and Chemistry (SETAC).

The record reveals that Sigma Xi awards membership to "those who have demonstrated noteworthy achievements in research." A "noteworthy achievement" must be evidenced by "publications, patents, written reports, or a thesis or dissertation." Each year, the society initiates more than 5,000 members and 180 members of the total membership (nearly 95,000) have won the Nobel Prize. ASBMB restricts membership to those holding doctoral degrees who have published at least one paper since receiving that degree and are sponsored by a current member. SETAC requires one of three combinations of education and experience.

The director concluded that these organizations, while "restrictive," do not require outstanding achievements of their general membership. On appeal, counsel argues that the petitioner's membership in Sigma Xi meets this criterion. He notes that Sigma Xi includes 180 Nobel Prize winners, "one of the highest honors one can achieve in any field." The petitioner submits documentation regarding the significance of the Nobel Prize and a letter from Dr. Abhiram Dukkipati asserting that Sigma Xi is a distinguished organization.[2]

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[1] The petitioner did not submit a resume or curriculum vitae or resume. The record contains no evidence of any connection between the petitioner and Santa Clara University or an explanation of the basis for the chapter's nomination.

[2] Dr. Dukkipati indicates that he is a research scientist at Stanford University School of Medicine and that he obtained his Ph.D. at Syracuse University. Dr. Dukkipati does not provide a resume or curriculum vitae. An Internet newsletter from Syracuse University indicates that an Abhiram Dukkipati defended his dissertation in December 2001. A search for "Dukkipati" in the Stanford University School of Medicine website search engine produced no results. A list of the faculty for the Department of Microbiology and Immunology at the university, on whose letterhead the letter appears, does not list Dr. Dukkipati. At best, it appears that Dr. Dukkipati is a recent Ph.D.

The prestige of the Nobel Prize is not in dispute. It remains, however, that the petitioner is not a recipient of the Nobel Prize. Thus, its significance is irrelevant. That Sigma Xi includes members who have won the Nobel Prize does not impart that distinction to the vast majority (98.1 percent) of its members who have not been so recognized. It remains, a "noteworthy" achievement, as defined by the society, is not an outstanding achievement. An organization that boasts 95,000 members does not represent only that very small percentage at the top of the field. We concur with the director that the petitioner's membership in Sigma Xi cannot serve to meet this criterion.

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.

Neither counsel nor the petitioner claimed the evidence of record relates to this criterion. The director stated that articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, they cannot be considered published material about the petitioner. On appeal, counsel challenges the director's reasoning, but concedes that the petitioner does not claim to meet this criterion. We agree that the citation of an alien's work is not published material about the alien. Moreover, the record contains no evidence that the petitioner's work has ever been cited.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner submits a letter from the principal of the KGK Post Graduate College asserting that the petitioner "was on the panel of examiners who conducted the University Practical examination" for baccalaureate candidates in 1996 and 1997. In addition, the petitioner submitted a letter from the principal of K.R. College, Mathura, certifying that the petitioner "conducted Zoology Pract. Examination of Science students as an external Examiner in faculty of Education at this centre on dated March 24 & 25, 1997." The principal indicates that this examination involved 60 students.

In response to the director's request for additional documentation, the petitioner submitted a new letter from the principal of KGK College. This new letter indicates that the petitioner was an assistant professor of biochemistry at that college for the 1996-1997 academic year. The letter further asserts that the petitioner judged the projects that qualified for a national talent search. Finally, the letter indicates that the qualifications for serving on the examination panel are working as a lecturer or assistant professor at a reputed college or university, being associated with research in the concerned field, and holding expertise in the field for which judgment is sought.

The petitioner also submitted a letter from Dr. Madhu Seth of K.R. College, Mathura. Dr. Seth indicates that the petitioner evaluated the examinations of post-graduate life science students as well as Masters and Ph.D. research projects. He then discusses the criteria for external examiners as follows:

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graduate performing postdoctoral research at a prestigious university. He does not appear to be a preeminent experienced expert in the field.

> The criteria to choose the Judge for evaluating the work is based on the rules that the person should hold a position of a full time tenure track lecturer or Professor at the Nationally recognized University or Degree College as per the Government of India rules. The person should be an expert in his/her field to judge the work done by research students and conduct the examination in all fairness. Lastly, appointment is subject to a rigorous review of credentials by the Dean of Education, Dean of Life Sciences and the Principal of the College.

The director concluded that evaluating students or trainees cannot serve to meet this criterion because they are not at the alien's "professional level" in the field of endeavor. On appeal, the petitioner submits a letter from Dr. Dukkipati asserting that judging Ph.D. level students is akin to judging professional work.

The regulations do not require that the alien judge the work of others at the same "professional level," but in the field of endeavor or a related field of endeavor. While judging the work of baccalaureate level students cannot be considered judging work in a field of endeavor, we concede that, on a case-by-case basis, the work of graduate students can constitute work in a field of endeavor. Nevertheless, we cannot ignore that it is inherent to the position of teacher, instructor, or professor to evaluate the work of students. Thus, student review is routine in academia; not every faculty member enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from other teachers, instructors, or professors in her field we cannot conclude that she meets this criterion. The petitioner was a faculty member at KGK College. Moreover, while the second letter is vague in this respect, the initial letter is clear that the petitioner was only evaluating undergraduate work. Thus, her evaluation of baccalaureate students at that institution did not constitute judging the work of others in her field and is not indicative of national acclaim.

We acknowledge that the petitioner allegedly served as an external examiner at K.R. College. Although the record does not contain the petitioner's resume or curriculum vitae, there is no indication in the record that she was a member of their faculty. Nevertheless, the claim that the petitioner was evaluating Master's and doctoral projects is inconsistent with the petitioner's credentials at the time. The petitioner obtained her Master's degree in 1996 and began her Ph.D. studies in 1997. It is not credible that the petitioner would be asked to evaluate doctoral or even Master's projects in March 1997, immediately upon completing her own Master's degree and prior to beginning her own Ph.D. studies, whatever her academic achievements may have been. Regardless, the requirements for external examiners provided by Dr. Seth are not indicative of national acclaim.

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

The petitioner relies on her presentations as evidence to meet this criterion. In 1996, while a Master's degree candidate at Hindu University, she delivered a talk on Cystic Fibrosis at that university. The petitioner also presented "Carcinogenic Effects of Colouring Agents in the Liver and Kidney of Albino Rat" to the faculty of B.S.A. College, Mathura and "Effect of Azo Dyes on the Human Health" at

Faiz-E-Aamin Modern Degree College in 1998. She also presented "Educating Indian Masses on Color Chemistry and Toxicology" at Rohilkhand University, where she was a doctoral student, in 1999. Further, she presented "Alterations in the Phosphorus and Calcium Level in the Liver and Kidney of Albino Rat Induced by Azo Dyes" at the Annual Young Investigator Science Seminar Presentations at K.R. College, Mathura in 1999. Finally, the petitioner submitted an invitation to present her work at Assistant Professor Sean M. Burgess' laboratory at the University of California, Davis. In a subsequent e-mail, Professor Burgess praised the petitioner's presentation. It is clear from the message, however, that the presentation was an unsuccessful attempt to secure a postdoctoral position in Professor Burgess' laboratory.

The petitioner also submits several reference letters. Dr. Ramesh Chandra Gupta, a coordinator at Hindu College (M.J.P. Rohilkhand University), discusses the petitioner's work as a doctoral student and research assistant at that institution. Dr. Gupta states:

> [The petitioner] has worked on physio-biochemical anomalies caused due to Azo dyes. These dyes have [been] shown to cause toxicity and carcinogenic activity when consumed as colouring agents in various food products. The disposal of these dyes is also a major ecological concern. The exceptional results of [the petitioner's] work on the changes in the enzymatic activity of hepatic and renal enzymes on induction of Metanil yellow and Bismark Brown have been widely recognized and published.

In a subsequent letter, Dr. Gupta asserts that the petitioner's work with Azo dyes was original and the only research world wide to analyze the effects of Metanil Yellow and Bismark Brown on Norwegian rat livers and kidneys.

Dr. Ramesh Vijay, a neuroscientist at Harvard University who obtained his Ph.D. in 1998, indicates that he "interacted" with the petitioner back in India. Dr. Vijay asserts that the petitioner's work with Azo dyes gained "widespread recognition." Dr. Vijay continues:

> [The petitioner's] current work is on the physio-biochemical anomalies in the liver and kidney of Rattus norvegicus caused due to azo dyes where she has pioneered the biochemical techniques to study the changes in the enzymatic activities of Glucose-6-phosphatase, lactic de hydrogenase, Succinic de hydrogenase and Pyruvic de hydrogenase.

Dr. Vijay concludes that the petitioner's work has been presented at reputable scientific conferences and published in prestigious journals.

Dr. Ananda P. Sen, a scientist at Calyx Therapeutics, Inc., asserts that she met the petitioner when the petitioner was giving a seminar on bioinformatics at Calyx Therapeutics, Inc. Dr. Sen asserts that she subsequently read the petitioner's articles and found them unique, involving "key technologies that are vital and beneficial to the growth of Biotechnology industries in the USA."

Dr. Amitabh Jha, Chief Chemist at Alviva Biopharmaceuticals, Inc. who was awarded his Ph.D. in 1998, asserts that he met the petitioner at a conference in 1999. While Dr. Jha asserts that the petitioner has attained acclaim based on her conference presentations and describes her work with Azo dyes as significant, he later states that she has only the "potential to make significant contribution[s] for the development of biochemical research in [the] USA as well [as] addressing the unmet eco-toxicological needs of the society." He concludes that the "United States offers the best environment and infrastructure for scientific discoveries and inventions and [the petitioner] has the capability to turn this opportunity into real discoveries."

Dr. Sushmita M. Chanda, a principal research scientist at Roche Bioscience who was awarded her Ph.D. in 1995, claims to know the petitioner "though her remarkable work on Azo dyes." She continues:

> [The petitioner's] outstanding work has clearly demonstrated that the ingestion of these dyes causes major changes in the enzymatic activity of the liver and kidney as seen by marked increases in serum glutamopyruvate transferase (SGPT) and serum glutamo-oxaloacetate transferase (SGOT). These elevations in serum enzymes are an indicator of liver and kidney toxicity. Her research has established that these dyes could be markedly toxic if ingested. Her findings have significantly contributed to the field of mutagenesis and toxicity of Azo dyes. It is important to note that [the petitioner] helped in advancing the existing state-of-the-art for this research area by bringing in modern techniques in her work.

Dr. Sanjay Chanda, Director of Toxicology at NerogesX, Inc. who was awarded his Ph.D. in 1994, asserts that he learned of the petitioner's work through her publications and provides praise of the work reported in those publications.

Dr. Rupa S. Doppalapudi, a senior cytogeneticist at SRI International, Inc., asserts that he knows the petitioner through her publications and interactions at scientific meetings. He states: "She has made several important research contributions in the area of toxicology; the most important one is finding alterations in several enzyme activities in rats exposed to azodyes [sic]."

Dr. Martin Risk, an adjunct professor at Mission College, asserts that he met the petitioner "as the team leader in a group project on cystic fibrosis in which I participated, at the University of California, Santa Cruz." He describes the petitioner's work with Metanil Yellow and Bismark Brown Azo dyes as "significant in toxicology."

Sonali Mohanty, indicates that he is "presently conducting researches [sic] in Biochemistry" at University Hospital Zurich.[3] Mr. Mohanty claims knowledge of the petitioner's work through her

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[3] While Mr. Mohanty does not attach a resume or curriculum vitae, the website for the University Hospital in Zurich, www.med.unizh.ch/zkf/groups/niessen.html, indicates that Mr.

publications. Dr. Mohanty asserts that the petitioner's work is significant because Metanil Yellow and Bismark Brown are both still widely used.

Dr. Sas Biswas, a senior scientist at the Ministry of Environment and Forests in Dehradun, India, asserts knowledge of the petitioner through her articles. Dr. Biswas characterizes the petitioner's work with Azo dyes as "very significant," noting that Metanil Yellow and Bismark Brown are "still freely available and widely used."

The director concluded that the letters were insufficient to establish that the petitioner had made an "original contribution of major significance." On appeal, counsel argues that the petitioner's work with Azo dyes is a contribution of major significance not simply because she revealed something previously unknown, but also because of the "huge implications for the health and well being of human beings." Counsel notes that the petitioner submitted several letters from experts claiming to have no association with the petitioner and newspaper articles reflecting that Azo dyes are being banned in several countries.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Moreover, many of the petitioner's references appear to be recent Ph.D. graduates or students, and not experienced experts in the field, regardless of the institution with which they are associated. Regardless, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. Moreover, the letters provide general claims of the importance of her work without concrete examples of the petitioner's influence. For example, the petitioner did not submit letters from high-level officials in the government agencies responsible for banning Azo dyes indicating that the petitioner's work influenced their decision to do so.

The newspaper articles submitted do not indicate that the movement to ban Azo dyes is in any way the result of research performed by the petitioner, Dr. Gupta, or work performed at Hindu College. Thus, these newspaper articles provide no support for the implication that the petitioner's work led to the banning of Azo dyes. Indeed, one of the newspaper articles regarding Germany's decision to ban Azo dyes is dated November 3, 1995, almost two years before the petitioner began working with Dr. Gupta on Azo dyes, three years before she began to present her findings on Azo dyes at other universities in India, and five years before her two- and three-page articles regarding her studies were published in the *Himalayan Journal of Environment and Zoology* and the *Proceedings of the Academy of Environmental Biology*.

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

Mohanty is a Ph.D. student in Dr. Markus Niessen's laboratory. Thus, Mr. Mohanty does not appear to be an experienced expert in his field.

The petitioner submitted a two-page article and a three-page article published in the *Himalayan Journal of Environment and Zoology* and two abstracts published in *Souvenir and Abstracts* of the 2001 National Symposium on Status of India's Faunistic Diversity and Environment and the *Proceedings of the Academy of Environmental Biology* published by the Indian academy. The petitioner submitted letters from other researchers attesting to the significance of these publications. The director concluded that the record included no objective evidence regarding the impact of these articles. On appeal, counsel argues that the petitioner has been published in peer-reviewed journals and that the rigorous review process precludes every researcher from being published. In a letter submitted on appeal, Dr. Dukkipati asserts that the petitioner's ability to be published is evidence of the outstanding nature of her work.

While we do not contest that the petitioner has been published in peer-reviewed journals, the Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Bureau's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The record contains no evidence that independent experts have cited the petitioner's work. Similarly, as stated above, the record contains no evidence that the decisions to ban Azo dyes around the world were based on the petitioner's articles, which were published after several of the banning decisions. Moreover, we cannot ignore that the publication histories of the petitioner's references as indicated on their resumes far outweigh the petitioner's. For example, Dr. Gupta lists 36 publications. Thus, the petitioner's publication history is not evidence that she is one of the very few at the top of her field.

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

Initially, the petitioner submitted a letter from Anil Kapuria, Chief Executive Officer of ASMAsoft, Inc. asserting that the petitioner plays a "major lead role" for that company as a Bioinformatic Scientific Advisor. In that position, the petitioner advises the software engineers "of the needs and requirements of the Bioinformatic industry," traveling to Germany to evaluate technologies and represent ASMAsoft, Inc. at a trade fair in 2001. Mr. Kapuria indicates that ASMAsoft, Inc. is a consulting company with Fortune 500 clients such as INTEL, SUN Microsystems, and Wells Fargo. We note however, that in May 2001, the petitioner completed "Essential Bioinformatics," presented by San Jose State University.

In response to the director's request for additional documentation, counsel claimed that the petitioner played a leading or critical role for Hindu College. The petitioner submitted a letter from the principal

of Hindu College discussing the prestige of the college and the petitioner's role as head of research teams that presented their research at other universities.

The director noted that the principal at Hindu College was associated with the petitioner and concluded that the petitioner had not established that playing a crucial role on a research project was sufficient. On appeal, counsel notes that someone associated with the petitioner is in the best position to evaluate the role she played.

We acknowledge that the petitioner's employer may be in the best position to evaluate the role she played for that employer. Nevertheless, we concur with the director's ultimate conclusion on this criterion. While Hindu College may have a distinguished reputation, we cannot conclude that every doctoral student/researcher who leads a research team in one of a distinguished college's laboratories plays a leading or critical role for the college as a whole.

While not addressed by the director, we also note that the record contains no objective evidence of ASMAsoft, Inc.'s national distinguished reputation through objective evidence such as positive, national media coverage of the company.

Evidence that the petitioner seeks to enter the United States to continue work in the area of extraordinary ability.

All of the evidence of record relates to the petitioner's toxicology research with Azo dyes. The record does not include evidence of any contributions or published articles relating to any other issue. Yet, the petitioner seeks to work as a bioinformatics developer. In this job, according to the CEO of her prospective employer, ASMAsoft, Inc., she would be advising the company and its engineers of the needs and requirements of the Bioinformatic industry. According to the CEO, the company's clients include INTEL, SUN Microsystems, and Wells Fargo. According to the promotional materials for ASMAsoft, Inc. in the record, the company was created to distribute Indian software resources in the United States. Specifically, "ASMAsoft provides software & services that enable our customers to deploy electronic & mobile commerce technologies." There is no evidence that ASMAsoft, Inc. performs toxicology research or provides software or services to any clients researching toxicology. On May 22, 2001, the petitioner completed the course "Essential Bioinformatics," an apparent entry-level course at San Jose State University. The record simply does not reflect that the petitioner seeks to enter the United States to work in her claimed area of expertise, toxicology.

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.

Review of the record, however, does not establish that the petitioner has distinguished herself as a bioinformatics developer 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 indicates that the petitioner shows talent as a toxicologist, but is not persuasive that the petitioner's achievements in bioinformatics set her significantly above almost all others in that field. 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.