



U.S. Citizenship
and Immigration
Services

D8



FILE: WAC 09 018 51870 Office: CALIFORNIA SERVICE CENTER Date: **DEC 03 2009**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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 you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary achievement in the motion picture or television industry. The petitioner, a California-based talent agency, seeks to employ the beneficiary as an actor/stunt artist for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has a demonstrated record of extraordinary achievement in the motion picture and television industry. In denying the petition, the director determined that the petitioner failed to establish that the beneficiary has been nominated for or has been the recipient of a significant national or international award, pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A), or that he has met three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director "has not put the evidence provided into proper accord and has only skimmed through both the original documents as well as the RFE response." Counsel contends that the beneficiary meets five of the six evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(v)(B).

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified alien who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991).

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides the following pertinent definition:

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

The regulation at 8 C.F.R. § 214.2(o)(3)(v) states, in pertinent part:

Evidentiary criteria for an O-1 alien of extraordinary achievement in the motion picture or television industry. To qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

- (A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or
- (B) At least three of the following forms of documentation:
 - (1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;
 - (2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
 - (3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
 - (4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
 - (5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or
 - (6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

In addition, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) requires the petitioner to submit copies of any written contracts between the petitioner and the beneficiary; an explanation of the nature of the events or activities, along with an itinerary; and two consultations, one from an appropriate union and one from an appropriate management organization.

The record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, and an appeal. The beneficiary in this case is a native and citizen of Japan whose resume includes one lead role in a short film, various supporting film roles, two television commercials, and several stage productions. The petitioner seeks to classify the beneficiary as an alien with extraordinary achievement in the motion picture and television industry as an actor/stunt artist.

In denying the petition, the director found that the petitioner had failed to satisfy any of the eligibility requirements set forth at 8 C.F.R. §§ 214.2(o)(3)(v)(A) or (B). The director noted that while the evidence submitted related to at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B), the quality of the evidence submitted was insufficient to establish that the beneficiary's achievement in the motion picture or television industry has risen to the level where he is recognized as outstanding, notable, or leading in the field.

Upon review, and for the reasons discussed herein, the AAO concurs with the director's determination. The petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary achievement in the motion picture and television industry pursuant to the regulatory definition and evidentiary criteria applicable to the O-1 visa classification.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has received a significant national or international award or prize in his or her field pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. Here, the petitioner has not submitted evidence that the beneficiary has been nominated for or received a significant national or international award or prize comparable to an Academy, Emmy or Grammy Award.

As there is no evidence that the beneficiary has been nominated for or received a significant national or international award or prize, the petitioner must establish the beneficiary's eligibility under at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B).

In order to meet criterion number one, the petitioner must submit evidence that the beneficiary has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts or endorsements. 8 C.F.R. § 214.2(o)(3)(v)(B)(1). The petitioner claims that the beneficiary meets this criterion, and the related criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(3), which requires the petitioner to submit evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials. The AAO notes that the petitioner relies on the same evidence to meet both criteria.

The petitioner has submitted evidence that the beneficiary performed in a lead role in the short, Japanese-language horror film, ██████ in 2005. The film was an official selection of the Chicago Horror Film Festival and the 9th Annual Indies Movie Festival in Japan, and was eventually released on DVD; however, there is insufficient evidence to establish that the film itself or the film festivals in which it appeared have a distinguished reputation. The petitioner submitted a brief article from *Cinema Square* magazine (Japan, date not provided), which was related to the release of the film on DVD, however this article is insufficient to establish the distinguished reputation of the film. The petitioner has not submitted critical reviews, advertisements, publicity releases, testimonials or other documentary evidence establishing the film's reputation or the reputation of the festivals that selected the film. While counsel emphasizes that the beneficiary has appeared in other films, including ██████ and asserts that he has worked with famous actors and directors, it is evident that, as of the date the petition was filed, the beneficiary's sole lead acting role in a motion picture was in ██████

The record contains evidence that the beneficiary appeared in a Verizon Wireless television commercial in 2006, and in a Jinro (Japanese beverage) commercial in 2004. Counsel indicates that these are "the world's most distinguished companies." While these may be well-known companies in their respective industries, the fact that the beneficiary appeared in their commercials is insufficient evidence of his extraordinary achievement in the television industry. The petitioner has submitted photo stills from the advertisements and evidence of the beneficiary's payment for his appearance in the Verizon commercial. The petitioner has not provided contracts, publicity releases regarding the advertising campaigns, or other evidence to establish that the beneficiary performed in a leading role or that the advertising campaigns were distinguished in any way. These two television commercials appear to represent the extent of the beneficiary's experience in the television industry.

Finally, counsel emphasizes that the beneficiary was awarded "Best Actor of the Year" by the Theatre of Arts Hollywood in 2006 for his performance as Cassius in a stage production of *Julius Ceasar*. The scope and significance of this award has not been explained or documented. According to a letter from ██████ Director of Education at the Theatre of Arts, the beneficiary was "an exemplary student" at the Theatre of Arts and attended acting classes there. Therefore, based on the limited evidence submitted, he appears to have been awarded based on his work in local, student theatre productions. The petitioner has not submitted critical reviews, advertisements, publicity releases, testimonials or other evidence to establish the distinguished reputation of the student productions or the reputation of the Theatre of Arts. The AAO notes that ██████ of the Theatre of Arts, writes that "American Directors, Producers, Casting Directors are aware of [the beneficiary] and [h]is brilliance," as a result of winning the award, but this statement alone is insufficient to establish the distinguished reputation of the award, the Theatre of Arts, or its productions. Furthermore, while the beneficiary's

best actor award is notable, this award for stage acting is not indicative of his extraordinary achievement in the motion picture and television industry.

In addition, the petitioner must establish that the beneficiary will provide services as a lead or starring participant in productions or events with a distinguished reputation, and/or for organizations or establishments that have a distinguished reputation. The AAO notes that, based on the evidence submitted at the time of filing, the beneficiary has been offered a lead voice-over role in a feature film titled "[REDACTED]" being produced by [REDACTED] for Daiseye Pictures. The petitioner has provided no explanation or documentary evidence regarding the project or the studio that will produce the film, and it can not be concluded that the beneficiary's participation in the project would meet the evidentiary criteria. Counsel's claims that the beneficiary's "proposed projects" have budgets that exceed one million dollars and "will be featuring a cast of some of the most popular actors and actresses in the entertainment industry," are not supported by any evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the beneficiary does not meet this criterion.

On appeal, counsel refers to the beneficiary as [REDACTED]," and claims that the "beneficiary is a renowned dancer who has performed at prestigious TV productions and stages which a distinguished reputation produced [*sic*] and directed by acclaimed and prestigious producers and directors," and that "due to her extraordinary performances, she has been extended offers to perform in major productions as evidence [*sic*] by contracts and endorsements." Counsel's assertion is unpersuasive, as, by all other accounts, the beneficiary is a male actor rather than a female dancer.

Based on the foregoing, the petitioner has not established that the beneficiary has performed as a lead or starring participant in productions or events which have a distinguished reputation, or that he has or will perform in a lead, starring or critical role for organizations and establishments that have a distinguished reputation. Therefore, the criterion at 8 C.F.R. §§ 214.2(o)(3)(v)(B)(1) and (3) have not been met.

In order to establish that the beneficiary meets the second criterion, the petitioner must submit evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications. 8 C.F.R. § 214.2(o)(3)(v)(B)(2). On appeal, counsel asserts that the beneficiary has submitted "copies of various newspaper and magazine articles, advertisements, concert reviews, and other materials relating to the current success and remarkable achievement of [the beneficiary's] career," and contends that "[the beneficiary's] performances have been publicized in major newspapers, magazines and internet websites." Counsel further indicates that the petitioner is attaching, as "Exhibit H," copies of newspaper and magazine articles" as evidence of the beneficiary's international recognition. The AAO notes that the only "Exhibit H" in the record was submitted in response to the director's RFE, and it is not comprised of copies of newspaper and magazine articles.

Upon review, the only published materials in the record of proceeding include: (1) a brief quote from the beneficiary that was published in an unknown Japanese publication; (2) an article titled "Cover Closeup" that

appeared in the January 15, 2007 issue of *Bridge U.S.A.*, a biweekly Japanese-language periodical published in the United States; and (3) a brief article regarding the DVD release of ██████ which appeared in *Cinema Square* magazine (Japan). The article in *Bridge USA* is brief, and mentions that the beneficiary attended acting classes at the Theatre of Arts in Los Angeles and played a lead role in ██████." The article in *Cinema Square* magazine provides a brief summary of the plot of ██████" mentions that the beneficiary was the leading actor in the film, and notes that he "got his first nominee of the Best Actor in the Japan Indies Film." The AAO notes that there is no mention of such nomination elsewhere in the record. Upon review, the minimal evidence submitted to establish this criterion does not demonstrate that the beneficiary has received national or international media recognition for his achievements in the motion picture and television industry. Only one article is specifically about the beneficiary and it does little more than provide a brief biography and confirm that he held a leading role in '██████'. The evidence submitted to meet this criterion is not persuasive evidence that the beneficiary has achieved a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that he is recognized as outstanding, notable, or leading in the motion picture or television field.

To establish that the beneficiary meets the fourth criterion, the petitioner must establish that the beneficiary has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications. 8 C.F.R. § 214.2(o)(3)(v)(B)(4).

While counsel claims on appeal that the beneficiary meets this criterion, the petitioner did not address this criterion at the time it responded to the director's request for evidence. Counsel claims that the petitioner provided "a detailed explanation of the Beneficiary's [*sic*] relating to his commercial success and other qualifications contributing to such were provided." Counsel refers to "letters of recommendation and publications involving highly acclaimed productions." However, as discussed above, the petitioner has submitted minimal evidence regarding the beneficiary's work from published sources. The regulations do not indicate that this criterion can be met through "a detailed explanation" or through "letters of recommendation" from the beneficiary's colleagues and teachers. Rather, this criterion requires the petitioner to submit evidence that there is a published record of the beneficiary's critical or commercial success, such that his achievement is acknowledged in the industry at-large. The petitioner has not demonstrated that the beneficiary meets this criterion.

In order to meet the fifth regulatory criterion, the petitioner may submit evidence that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements. 8 C.F.R. § 214.2(o)(3)(v)(B)(5).

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(iii)(D) provides that affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

Counsel does not specifically address this criterion on appeal, but, in reference to the second criterion, noted that the petitioner submitted "letters of recommendation from various prominent dance luminaries, producers and other professionals who bear witness to the Beneficiary's extraordinary history of distinguished professional achievement and her manifest talent and ability in Japan and internationally." Counsel appears to be referring to a different petition involving a different beneficiary. Nevertheless, the petitioner did submit several recommendation letters written on behalf of the beneficiary in this proceeding.

██████████ states that the beneficiary is "a skilled actor and disciplined performer who has truly learned his craft." He describes the beneficiary as "irreplaceable and a real treasure in the Japan film industry." However, he does not describe the beneficiary's achievements or recognition in the motion picture and television industry in *factual terms*, or indicate any knowledge of the beneficiary's accomplishments in the field beyond the single project in which he worked with the beneficiary.

The petitioner submitted a letter from ██████████ of the Theatre of Arts, who states that the beneficiary is a "strong, dynamic and much desired artist," who "brings to all his work magic unlike any other Artist." ██████████ indicates that many American producers have already hired the beneficiary and states that "he will certainly have no problems securing work within a larger and more important community." While ██████████ statements are highly complimentary with respect to the beneficiary's talent, he does not directly discuss the beneficiary's achievements or accomplishments in any detail. Rather, his statements suggest that he regards the beneficiary as an actor who is prepared to move to higher levels of achievement and recognition within the industry, rather than as an actor who is already regarded as leading or renowned in the field.

The petitioner provided a letter from ██████████ a director/writer who states that he cast the beneficiary in a supporting role in his film "██████████." ██████████ states that the beneficiary's "talent and professionalism almost guarantee his [*sic*] a successful career in any international market," and opines that the beneficiary "is going to be a huge treasure for all of us." ██████████ speaks highly of the beneficiary's talent and potential, but, like ██████████ and ██████████ he does not describe in any detail his knowledge of the beneficiary's achievements or recognition in the field to date.

The record includes a letter from ██████████ an actor who states that he worked with the beneficiary on "██████████ and many other motion picture projects." He indicates that the beneficiary "is irreplaceable and a real treasure in the American film industry." ██████████ does little more than confirm that the beneficiary is a talented actor who appeared in ██████████ His recommendation does not describe the beneficiary's recognition or achievement in the industry in *factual terms*.

██████████ of the International School of Motion Pictures, states that he has known the beneficiary for two years. ██████████ notes that the beneficiary appeared in "██████████" a thesis short film directed by one of the school's students, and remarks that the beneficiary "not only spoke fluent English but also appeared to be a very confident, professional actor." Again, ██████████ does not address the beneficiary's achievement or recognition in the motion picture and television industry. Rather, he indicates that he was

impressed with the beneficiary's work in one short film directed by a student and by the beneficiary's communication skills.

Finally, the petitioner submitted a letter from [REDACTED], an actor who states that he worked with the beneficiary in "An Audition" in which "he gave performances more than my expectation." [REDACTED] states that the beneficiary "has a genius talent as an actor very much," but, as with the other individuals providing witness letters, he does not discuss the beneficiary's achievements or recognition in the industry.

While the AAO recognizes that the individuals who provided letters hold a very high opinion of the beneficiary's talent and potential, the submitted testimonials do not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). None of the persons providing testimonials have clearly indicated their knowledge of the beneficiary's achievements in the field of acting. Rather, several of them opine that the beneficiary's achievements and recognition in the field will occur in the future if the beneficiary has an opportunity to continue to develop his natural talent.

Furthermore, the petitioner has not established that any of the individuals providing letters could be considered a "recognized expert" in the television and motion picture industry or in the acting profession. While reference letters *can* satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5), to do so the letters must reflect that the beneficiary has a very high level of accomplishment in the motion picture or television industry to the extent that he is recognized as outstanding, notable, or leading in the motion picture or television field. Subjective assessments of talent cannot suffice in this regard. Furthermore, an artist whose reputation is largely confined to former instructors and colleagues has not achieved a degree of recognition significantly above that ordinarily encountered in the motion picture and television industry. The petitioner has not submitted evidence that the beneficiary has gained any recognition in his field beyond his circle of former co-workers and teachers. The letters do not demonstrate significant recognition outside of that circle consistent with the accomplishments associated with an alien with extraordinary achievement.

The sixth and final criterion requires the petitioner to submit evidence that the beneficiary has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(v)(B)(6). The petitioner has offered the beneficiary an annual salary of \$80,000. The beneficiary has also been offered a fee of \$900/day for work on the feature film "Cloud on a Hill," although it is unclear how many days of work would be involved in the project. At the time of filing the petitioner also submitted a "deal memo" for an untitled project, which was estimated to involve between 10 and 18 days of work at a rate no lower than \$100 per day.

The director acknowledged the proposed \$80,000 salary, but observed that the petitioner submitted no source of statistical comparison that would allow USCIS to determine whether the beneficiary's salary is "a high salary" in relation to other actors in the television or motion picture industry.

On appeal, the petitioner states that the beneficiary's deal memo with Daisey Pictures for "Cloud on a Hill" reflects that "he commands the highest remuneration/salary among his peers worldwide." Counsel provides no basis for this conclusion. As noted above, it is unclear whether the beneficiary is being paid the stated daily rate for the duration of the contract or solely for days on which he is required to perform services related to

the film. The petitioner has not provided information about the top salaries of actors in the television or motion picture industries. It has therefore not been established that the daily rate of \$900 is a "high salary" in relation to highly accomplished television or motion picture actors, such that it would be considered indicative of the beneficiary's extraordinary achievement.

Counsel further states that, according to "Salary.com," only 10% of actors and performing artists earn more than \$68,972, thus qualifying the beneficiary's base salary of \$80,000 as a high salary. The petitioner did not provide a copy of the data to which he is referring and the information cannot be verified. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the petitioner has not established that the beneficiary meets this criterion.

Overall, the record does not establish that the beneficiary is an alien of extraordinary achievement in the motion picture or television industry. As noted above, "extraordinary achievement" means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field, as required by section 101(a)(15)(O) of the Act. The petitioner submitted no evidence that the beneficiary has received a major, internationally recognized award and the documentation submitted does not meet three of the six evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act and the petition must be denied.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish through submission of extensive documentation that the beneficiary is recognized as outstanding, notable or leading in his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). While the beneficiary appears to be a talented actor with the potential to reach a higher standing in the industry, he does not have a demonstrated record of extraordinary achievement nor have his achievements been recognized in the field through extensive documentation.

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.

ORDER: The appeal is dismissed.