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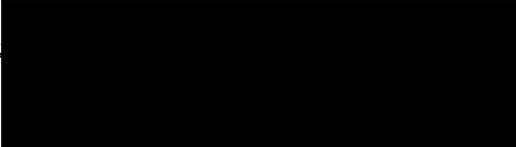
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U.S. Citizenship  
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FILE: WAC 03 009 51878 Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2003

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

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 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.

*Mari Johnson*

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 (AAO) 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 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 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 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 filmmaker. 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.

On appeal, counsel asserts that the director applied the wrong standard by asserting that "the petitioner's reliance on simply meeting a set number of criteria is misplaced." Thus, counsel argues that should the AAO conclude that the evidence does not demonstrate that the petitioner meets at least three criteria, we must remand the matter to the director.

It is important to look at the sentence quoted by the director in its context. Following the quoted sentence, the director states:

The submission of documentation relating to [the] several kinds of evidence listed do[es] not necessarily establish that an alien has achieved sustained national or international acclaim and recognition, and does not mandate a finding of eligibility. The regulatory criteria, however, are categories of evidence rather than types of documentation that automatically prove eligibility.

While we may not agree with the exact wording of the above statements, we do not read the director's decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. A more rational interpretation of the director's decision is that the petitioner submitted documentation that related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. This office consistently states 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 is indicative of or at the very least consistent with sustained national or international acclaim.

Regardless of the above language, the director concluded that the petitioner did not meet any of the regulatory criteria. For the reasons discussed below, we conclude that the petitioner meets only one criterion. Thus, we can uphold the director's ultimate conclusion that the record lacked sufficient evidence of the petitioner's eligibility.

The petitioner has submitted evidence claimed to meet or that relates to the following criteria.<sup>1</sup>

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

While the petitioner does not claim to meet this criterion, the director concluded that the petitioner's honors were "local or regional awards with few exceptions." If accurate, this statement would be problematic because a "few" national or international recognized awards would suffice to meet this criterion. The director further states that the petitioner did not submit any "background information about these awards."

The petitioner's resume includes an "Awards and Achievements" section. In this section, she lists the following:

Selected as one of the filmmakers of the [REDACTED] Showcase 2000,

Finalist in the [REDACTED]

Finalist in the International Festival of Independent Cinema of Ourense,

Honorary Mention at Rochester Film Festival [REDACTED]

Special Honoree of Project Involve: a mentoring program for women in film, and

Winner of the Finandoce Writing Contest: How would I like my city to be in 200 years."

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The selection of the petitioner's film for inclusion in Showtime's Latino Filmmaker's Showcase is better considered below pursuant to 8 C.F.R. § 204.5(h)(3)(vii) relating to artistic showcases. Being a finalist or receiving an honorable mention is not an award or prize. Recognition for participating as a mentor is not an award for excellence in the petitioner's field of filmmaking. Finally, the record contains no evidence that the petitioner's 1982 writing prize constitutes an award or prize for excellence in filmmaking to which the most acclaimed members of the field aspire to win. Thus, we concur with the director's ultimate conclusion that the petitioner does not meet this criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

Once again, while the petitioner does not claim to meet this criterion, the director concluded that the petitioner had not established that the American Film Institute, Cinewoman, and Women in the Director's Chair require outstanding achievements of their members. Counsel does not challenge this conclusion on appeal and we concur with the director.

*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.*

The director concluded that the published material submitted was not about the petitioner specifically. On appeal, counsel asserts that the use of the term "material" in the regulation "is purposefully used . . . to include any published material, and not to restrict this criterion to whole articles only." Counsel is not persuasive. We find the word "materials" is used so as not to limit the evidence to printed articles since the regulation includes materials in "other major media" in addition to professional or major trade publications. The director was correct that the materials must be primarily about the petitioner.

The petitioner submitted a listing of the Freecuencia Fest under Film Festivals in the "Calendar" section of the June 20, 2002 issue of the *Los Angeles Times*. The listing does not include the petitioner's name as the founder of this festival or as the director of the film "Hot Room" shown at the festival. The petitioner also submitted a 2002 article in *Entertainment Today* on the Freecuencia Fest Experimental Film and Video Festival. The article does not mention the petitioner by name. These materials will be considered below as evidence of Freecuencia Fest's distinguished reputation, but cannot establish the petitioner's personal acclaim. Anyone who did not already know of the petitioner would not learn of her through these materials.

In addition, the petitioner submitted reviews of Showtime's Latino Filmmakers Showcase in the "Calendar" section of the *Los Angeles Times*, *The Hollywood Reporter*, *La Opinion*, and *Latin Heat*. The reviews include no more than a sentence or two about the petitioner's film, "The Hot Room." Contrary to counsel's assertion, most of the reviews merely provide the subject of the film. The only review to evaluate the film is the *Los Angeles Times* review. The review, which notes that the films are all between 10 and 20 minutes long, states in its entirety:

Finally, [the petitioner's] "The Hot Room" is a moodily photographed, lingering look at a failed romantic relationship. It is not the most fascinating of subjects, but [the petitioner] shows an

artist's eye for detail and a keen understanding of the beauty with which lights touch the film's subjects.

The petitioner also submits an article in an Italian newspaper listing her film as one of many shorts showing at an international competition. The director states that "[c]itation of the work of others is [an] expected and routine occurrence in the motion picture and television industry." Subsequently, the director states:

The very fact that the work has been cited demonstrates that other filmmakers in the motion picture and television industry have found the petitioner's work to be useful, but an independent filmmaker does not earn sustained national or international acclaim simply by producing useful or valid results.

While the language used by the director would appear more applicable to scientific researchers, the basic concept that the director appears to be articulating is that it is expected that films will be reviewed. Regardless, the articles at issue review the showcase itself and do not focus or devote significant space to the petitioner's film. It could be argued that inclusion within a larger article is not fatal as long as the published material discusses the petitioner and her work in some detail. We need not address this issue, however, as a two-line description of the subject matter of the petitioner's film is insufficient to render the materials "about the petitioner" if the phrase is to have any meaning.

The petitioner also submitted a 1994 article entitled "Breaking Into the Boys' Club," in the calendar section of the *Los Angeles Times*. The article discusses the advertisement placed by 20 young women "desperately seeking to break into filmmaking" requesting funding. The advertisement received a response, funding the petitioner's film "Copper Women." The article notes the women's desire to show their film at the Sundance Festival, but does not indicate that they were able to do so. While the published material need not specifically assert that the petitioner is at the top of her field or that she has extraordinary ability, the content of the material is relevant to whether or not it can be considered evidence indicative of or consistent with national or international acclaim. An article noting the petitioner's lack of funding before advertising herself as a young woman "with vision, passion, and absolutely no money" is not indicative of or consistent with national acclaim.

In addition, the petitioner submitted a 1997 article entitled "Screening of a Short Film by [the petitioner]," published in the *San Luis Potosi*. While this article reports the opening of the petitioner's movie, "The Hot Room," the petitioner submitted no evidence of the publication's circulation. Thus, the petitioner has not established that the article appeared in major media. Similarly, the petitioner appeared on local Los Angeles networks, but the record contains no evidence that these interviews were broadcast nationally.

The petitioner claims to have been interviewed on Showtime Networks in 2000 as part of its Latino filmmakers showcase and on Radio Universidad Entertainment News in Argentina in 1995. In support of the Showtime interview, she submits a photograph of a television screen on which she is identified as the director of "The Hot Room." Showtime's logo, however, does not appear in the photograph. The petitioner did not submit a letter from Showtime confirming the interview and providing details about it, such as its length and whether it was broadcast nationwide. While the petitioner submitted a letter from LR 11 Radio confirming the Radio Universidad Entertainment News interview, the letter does not indicate that it was broadcast nationwide. Moreover, the radio interview was over seven years prior to the filing date of the petition and, without more recent published material about the petitioner, cannot establish the petitioner's sustained acclaim.

In response to the director's request for additional documentation, the petitioner submitted a letter from MT [REDACTED] a Southern California radio station, asserting that the petitioner was interviewed twice on this station, once before the date of filing and once after. The letter does not suggest that the interviews were broadcast outside of Southern California.

The petitioner also submitted another photograph of a television screen purporting to demonstrate that she was interviewed in Lima, Peru in September 2003. As stated above, a photograph of a television screen is poor evidence of a national broadcast.

In light of the above, the petitioner has not established that she meets this criterion as most of the evidence is not about her personally and she has not sufficiently documented the most persuasive material, the interview on Showtime.

*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 response to the director's request for additional documentation, the petitioner submitted a letter from [REDACTED] Grants Associate for the Cultural Affairs Commission of the Los Angeles Mayor's office. [REDACTED] asserts that the petitioner "served as a peer panelist for the City of Los Angeles Cultural Affairs Grants Program on Friday, November 22, 2002." The petitioner also submitted a letter from [REDACTED] Executive Director of L.A. Freewaves, asserting that she requested the petitioner to "curate" a video festival in November 2002. The director concluded that the petitioner had not established the number of panel members or the significance of the Los Angeles City panel.

On appeal, counsel asserts that the number of panelists is not relevant and that inquiring into the nature of the judging responsibilities violates the principles set forth in *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994). First, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Second, the court found that requiring a petitioner to demonstrate that a particular judging responsibility required extraordinary ability was circular. To avoid any analysis of the judging panel, however, would be to equate the members of local, low-level artistic grant committees in the panelist's own community with the national level committees that, for example, evaluate grant applications for the National Endowment for the Arts (NEA). Obviously, most judging falls between the two extremes and must be evaluated on a case-by-case basis. Such evaluation considers not whether the position requires extraordinary ability, the concept rejected by the *Buletini* court, but whether the judging position is indicative of or consistent with national or international acclaim. Those who are sought as judges by national entities or local entities outside their communities have a stronger claim than those who volunteer for local panels.

Regardless, the petitioner did not serve as a panelist until November 22, 2002, more than a month after the date of filing and did not "curate" the L.A. Freewaves event until the same month. Thus, her participation as a panelist cannot be considered evidence of her eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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

Mariano Cinat, Art Coordinator of the Association of Argentine Professionals, asserts that he screened the petitioner's film for a 2000 Latin American Festival and that the film received a standing ovation. Mr. Cinat praises the petitioner's creativity and talent, but does not provide examples of other work inspired by the petitioner's films.

Coordinator of the Latino Filmmakers Showcase for Showtime advised the petitioner that "The Hot Room" was selected for the showcase and demonstrates "a unique storytelling method," but does not specify how the petitioner has influenced her field. Co-chairman of SiTV, asserts that SiTV jointly produced Showtime's Latino Filmmakers Showcase and that extra airtimes for "The Hot Room" were included "due to its popular acclaim." describes the petitioner's "directorial expertise, inspired vision, and critical appeal" and characterizes her as a "truly original artist" who makes "a lasting impact on audience." Mr. does not assert that the petitioner has made an impact on the field itself.

The petitioner also submitted letters from film festival organizers expressing interest in showcasing the petitioner's work after viewing it at other festivals.

the producer and host of an entertainment news show airing on Galavision Networks, asserts that the petitioner has made "substantial contributions to our Latin film industry through her film appreciation expertise and artistic writing style." explains that the petitioner is the main screenwriter for and that her impact on the industry "is evident in the enthusiastic response the show has received from its audience and the continuous support the show receives by Galavision Networks." Other letters attest to the petitioner's influence and contributions generally without explaining what technique or style the petitioner originated or providing examples of the petitioner's influence in films by other directors.

who jointly co-founded Freecuencia Fest with the petitioner, credits the petitioner with "original and artistic film and video innovations" and asserts that "The Hot Room" "was notable for its stylish black and white photography and its remarkable performances." Another collaborator, asserts that the petitioner has an "extraordinary reputation in our industry for her remarkable achievements," that her work has been showcased at the most prestigious festivals, and that her work is specifically renowned for its uniquely expressive visual style. also asserts that the petitioner has received critical acclaim. A director with critical acclaim, however, should be able to provide reviews from noted film critics. The record does not contain such evidence.<sup>2</sup>

Academy Award nominee and winner of two Golden Globe Awards, asserts that the petitioner has "solid technical skills, outstanding artistic expressions, and a uniquely innovative creative perspective." He concludes that the petitioner has a consistent record of extraordinary achievements.

Executive Director of Independent Feature Project/West (IFP West), explains that IFP West is a nonprofit organization for independent filmmakers. According to the petitioner's film "Copper Women" was an IFP West project. asserts that "Copper Women" received "rave reviews in

<sup>2</sup> As discussed above, the one or two line plot summaries of the petitioner's films do not constitute critical "reviews."

numerous film festivals and newspapers.” As stated above, however, the record does not contain rave reviews or, indeed, any true reviews of the petitioner’s films.

██████████ an Argentine writer, director, and producer, asserts that the petitioner’s films “have made remarkable traces for others to follow and to feel inspired by. ██████████ nominated for Best Hip-Hop Artists at the 2000 L.A. Music Awards, asserts that the petitioner directed music videos for two Latino artists seen on Latin American television.

In response to the director’s request for additional documentation, the petitioner submitted letters attesting to her editing accomplishments after the date of filing that do not reflect on her eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. In addition ██████████ another independent filmmaker, asserts that the petitioner’s films are “incredibly visual, original, and avant-garde.”

We cannot conclude that every director who has created an original or innovative short showcased at a prestigious film festival has made a contribution of major significance to the field. Moreover, it can be presumed that truly influential works receive considerable attention from film critics. Such evidence is absent from the record. As stated by the director, the letters of support are almost entirely from the petitioner’s collaborators. Such evidence cannot establish the petitioner’s reputation outside her immediate circle of colleagues. The remaining letters are vague and do not explain how the petitioner’s work constitutes a contribution of major significance.

Counsel also asserts that Freecuencia Fest is a contribution of major significance. While this festival has garnered some media attention as a showcase for experimental Latino film projects, it is difficult to gauge the significance of this “contribution” to the field after only one festival.

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

The petitioner’s films have been shown at the following film festivals: the 2002 Freecuencia Fest; the 2000 Latin Heat Entertainment Industry Conference; the 1998 Latino International Film Festival; the 1997 Rocky Mountain Women’s Film Festival; the 1996 Festival de Cine Huesca in Spain; the 1996 Telluride Film Festival as one of the “Filmmakers of Tomorrow;” the 1996 Ourense Film Festival, the 1996 Central Florida Film and Video Festival’s “experimental venue;” the 1996 Festival Internacional ██████████ the 1996 Rochester International Film Festival: Movies on a Shoestring, where the petitioner won an honorable mention; the 1992 ██████████ and the 1993 Chicago Latino Film Festival. As stated above, the petitioner’s film “The Hot Room” was also selected to air on the Showtime Network as part of its Latino Filmmakers Showcase.

In response to the director’s request for additional documentation, the petitioner submitted evidence that her films were showcased at other film festivals after the date of filing. These showings are not evidence of the petitioner’s eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The director did not dispute the reputation of the festivals but determined that “it does not follow that the individuals presenting their work at these festivals are inherently among the best in their fields simply by virtue of their association with these distinguished events.” On appeal, counsel challenges this determination and the petitioner resubmits the evidence regarding the prestige of the festivals.

described the Telluride Film Festival as the “smallest of the world’s major film festivals.” The festival’s Internet site asserts that 5,000 people attend the festival annually based on its “reputation for innovative and exciting programming.” An article on the festival indicates that in 2000, the festival showed 20 of the 800 films submitted. As the next paragraph discusses “shorts,” it is not clear that the rate of acceptance includes “shorts” like the petitioner’s work. According to the Rocky Mountain Women’s Film Festival’s Internet site, the festival selected 23 of the 250 films nominated by its screening committee. The festival is “one of the oldest festivals profiling works by and about women.” The materials from the Ourense International Independent Film Festival indicate that the festival is the official film festival of the Council of the European Region. The Rochester International Film Festival is the oldest short film and video festival in the world.

While a petitioner cannot demonstrate acclaim simply by demonstrating an association with a prestigious organization or association, the director misapplied that principle to this criterion. This criterion focuses on displays at artistic showcases and exhibitions. Any artist who makes a living as an artist must display her work to some degree. Thus, not every artistic display is indicative of or consistent with national acclaim. While the director concludes that the prestige and selective nature of the showcases or exhibitions is not persuasive evidence to meet this criterion, he does not identify any other factor for consideration. Rather, he seems to conclude that the petitioner does not meet this criterion because the overall evidence does not establish that the petitioner is at the top of her field. This is the type of circular reasoning rejected by the court in *Buletini*, 860 F. Supp. at 1231.

We note that inclusion in one of the most prestigious festivals, Telluride, was under the category of “Filmmakers of Tomorrow.” Such classification is not strong evidence that the petitioner has already risen to the top of her field. Nevertheless, as the petitioner has adequately demonstrated the selective nature of the several festivals that accepted and showcased her work, we find that the petitioner meets this criterion.

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

As stated above, the petitioner is the main screenwriter for [REDACTED] President of Atempo Productions, asserts that the petitioner played a critical role for Atempo by developing and writing the feature films “Uncertainty” and [REDACTED] also attests to the petitioner’s role as a video editor on several Atempo documentaries. According to [REDACTED] at the time of writing, the petitioner was directing the documentary “White Mountain Apaches” for [REDACTED] President of Imagentertainment, attests to the video editing services the petitioner performed for Imagentertainment, including various commercials and projects for [REDACTED] Entertainment, and Imax Corporation.

The petitioner also provided evidence that she and Luis Salazar are the co-founders and co-directors of Freecuencia, a non-competitive festival that showcases past and contemporary “experimental” cinema and video by artists from Latin America. As discussed above, the petitioner provides evidence that the festival has had coverage in the major media.

In response to the director’s request for additional documentation, the petitioner submitted evidence that she organized a one-night benefit, “Oversoul” after the date of filing. The petitioner also submitted evidence that she is listed in the credits as an editor for a Spanish-language soap opera due to air on Univision in the United States. As discussed above, evidence of achievements after the date of filing are not evidence of the petitioner’s eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The record lacks evidence that [REDACTED] is an organization or establishment with a distinguished national reputation. We cannot conclude that a screenwriter for one program plays a leading or critical role for the entire company that produces it. The record also lacks evidence that either Atempo or Imagentertainment enjoys a distinguished reputation nationally. We cannot conclude that the petitioner has played a leading or critical role for Imagentertainment's clients.

As discussed above, Freecuencia Fest was covered in the major media, suggesting that it garnered some national attention. At the time of filing, Freecuencia Fest was a one-time event. The petitioner has not demonstrated that a film festival can enjoy a distinguished reputation without a consistent history of success over time.

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

Initially, counsel asserted that the petitioner "has a record of critical success." Once again, the record lacks detailed reviews from film critics. Regardless, the plain language of the regulation, however, requires evidence of *commercial* success in the form of box office receipts in the petitioner's field. The record does not contain box office receipts for the petitioner's films.

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 filmmaker 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 filmmaker, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.