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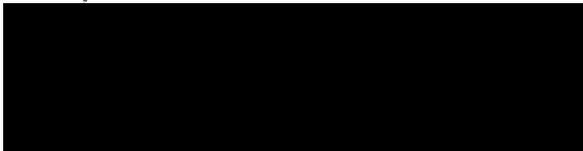
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a software developer. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary “permanently” in the United States as a research scientist. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel asserts that the director applied an incorrect standard and submits several brief non-precedent decisions issued by this office. The petitioner, through counsel, submits new evidence.

For the reasons discussed below, we concur with the director’s analysis. In addition, as will be discussed below, we find that the petitioner has not offered the beneficiary a position that is either permanent or to conduct research.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

- (i) the alien is recognized internationally as outstanding in a specific academic area,
- (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
- (iii) the alien seeks to enter the United States --
 - (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
 - (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
 - (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on July 23, 2002 to classify the beneficiary as an outstanding researcher in the field of chemical engineering. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of chemical engineering as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner claims to have satisfied the following criteria.

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field

The beneficiary lists several scholarships and an employee award on his curriculum vitae. Initially, the petitioner submitted evidence that the beneficiary was the recipient of a 1998 scholarship from the Korean Canadian Scholarship Foundation, a 1998 Certificate of Scholar from the same foundation and a 1999 Clifton W. Sherman Graduate Scholarship for Doctoral Study in Science and Engineering.

In response to the director's request for additional information about the beneficiary's honors, the petitioner submitted information about the Korean Canadian Scholarship Foundation scholarship, the Korea Advanced Institute of Science and Technology (KAIST) scholarship program and the Clifton W. Sherman Graduate Scholarship. While the petitioner submitted evidence of his attendance at KAIST and lists a scholarship to attend this institute on his curriculum vitae, the record does not contain evidence of this scholarship. Regardless, all of the information provided reveals that the scholarships claimed are typical scholarships awarded to graduate students to assist with tuition.

The director determined that student and employee awards are not indicative of international recognition. On appeal, counsel asserts that the awards were presented to a select number of "researchers and developmental scientists" recommended by renowned researchers and professors.

Scholarships are generally based on past *academic* achievement, not for accomplishments in a field of endeavor. While 8 C.F.R. § 204.5(i)(3)(A) references outstanding achievements in one's academic field, 8 C.F.R. § 204.5(i)(2) defines "academic field" as "a body of specialized knowledge offered for study." The definition

does not include typical bases for scholarships, such as grade point average and class standing. It remains, academic study is not a field of endeavor, academic or otherwise. Rather, academic study is training for a future career in an academic field. As such, scholarships in recognition of academic achievement, such as grade point average, are insufficient. In addition, while the beneficiary may have attended competitive universities, it remains that the beneficiary only competed against other students at the university at that time for the scholarship. We concur with the director that scholarships and the beneficiary's student award are simply not evidence of international recognition in the field. Rather, they represent high academic achievements in comparison with his fellow students.

Finally, while the employee award is not documented in the record of proceedings, we concur with the director that recognition from one's own employer is not indicative of or consistent with international recognition and cannot be considered a *major* award or prize, as required by the regulation at 8 C.F.R. § 204.5(i)(3)(i)(A).

In light of the above, the petitioner has not established that the beneficiary meets this criterion,

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members

The petitioner submitted evidence of the beneficiary's memberships in the North American Chapter of the International Chemometrics Society (NAMICS) and the American Institute of Chemical Engineers (AIChE). While the petitioner submitted materials regarding the Canadian Society for Chemical Engineering, he did not submit any evidence that the beneficiary is a member of that society.

The materials from NAMICS reflect that NAMICS is open to "anyone, anywhere, who's interested in chemometrics." The materials from AIChE reflect that senior membership eligibility is based on one of several combinations of education and years of experience.

The director concluded that the beneficiary's memberships were nonqualifying. On appeal, counsel asserts that there are selective criteria for membership in NAMICS and AIChE. Counsel is not persuasive. NAMICS is not selective at all; anyone with an interest in the subject matter can join. While AIChE limits membership to those who meet certain education and experience requirements, obtaining a degree and working in one's field are not outstanding achievements.

The record does not reflect that these organizations require outstanding achievements of their general membership. Thus, the petitioner has not established that the beneficiary meets this criterion.

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

Initially, the petitioner submitted a list of articles that cite the beneficiary's work. In response to the director's request for additional evidence, the petitioner submitted more citations and a letter to the editor responding to an article by the beneficiary and a rebuttal by the beneficiary.

The director concluded that the citations were insufficient to meet this criterion. On appeal, counsel asserts that the director failed to consider the letter to the editor from Professor [REDACTED]. Counsel asserts that the letter claims that the beneficiary's work has "boosted important academic discussion and has had a significant impact in the related research field." This quote does not appear either in the letter to the editor or the reference letter from Professor [REDACTED] submitted on appeal. In fact, the letter to the editor is a "comment of disagreement" challenging the beneficiary's critique of Professor [REDACTED] interpretation of his results.

We concur with the director that articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary. As such, they cannot be considered published material about the beneficiary.

While [REDACTED] letter may focus on the beneficiary's work, we cannot ignore the content of the letter. To hold otherwise would be to accept negative press to meet this criterion. While [REDACTED] letter is not entirely negative, it was written in defense of his work against the beneficiary's published critique of that work. Far more persuasive than a letter from the target of the beneficiary's critique responding to that critique would be independent journalistic coverage of the beneficiary's work or even the debate between him and [REDACTED]. The record does not contain such coverage.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

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

In response to the director's request for additional evidence, the petitioner submitted a May 11, 2004 e-mail requesting that the beneficiary review abstracts submitted for an AIChE meeting. The petitioner also submitted a February 10, 2003 e-mail from one of the beneficiary's professors advising an editor that she had assigned the manuscripts sent to her for review to the beneficiary for his review.

The director concluded that the beneficiary's review responsibilities did not appear to be beyond those typical of a researcher. On appeal, counsel asserts that the beneficiary serves as a reviewer on an ongoing basis. The petitioner, through counsel, submits additional evidence, all relating to 2004.

The record is absent evidence of any referee responsibilities prior to the date of filing, July 23, 2002. Any such work after that date is simply not relevant to the beneficiary's eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*; 14 I&N Dec. 45, 49 (Comm. 1971).

Moreover, being requested to review an article by one's own professor is not evidence of international recognition. Moreover, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary meets this criterion.

In light of the above, the petitioner has not established that the beneficiary met this criterion as of the date of filing.

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

Noting that all of the reference letters were from the beneficiary's immediate circle of colleagues, the director concluded that the petitioner had not established that the beneficiary enjoyed international recognition for his contributions. On appeal, counsel cites a nonprecedent decision for the proposition that the contributions need not be "major." Counsel further asserts that the beneficiary's colleagues are most qualified to assess his accomplishments and notes that the beneficiary has been cited. The petitioner, through counsel, submits additional reference letters.

The decisions from this office submitted on appeal are short decisions with little reference to the evidence in those cases. Moreover, they were not issued as precedent decisions and, thus, are not binding on either the director or this office. That said, we acknowledge that the criterion set forth at 8 C.F.R. § 204.5(i)(3)(E) does not require that the contributions be of "major significance." Nevertheless, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. While we will not "disregard appropriate evidence,"¹ we cannot ignore the ultimate standard for the classification sought, international recognition. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

We will consider all of the reference letters below, including the more independent letters submitted on appeal. We note, however, the following considerations in evaluating reference letters. While letters from colleagues are important in explaining the beneficiary's role in various projects, they cannot, by themselves, establish the beneficiary's recognition beyond his immediate circle of colleagues. In addition, letters from independent references who were previously aware of the beneficiary through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the beneficiary and are merely responding to a solicitation to review the beneficiary's curriculum vitae and work and provide an opinion based solely on this review. Finally, letters identifying specific contributions and explaining how they have impacted the field are far more persuasive than letters providing general assertions of ability and acclaim.

The beneficiary obtained his Master's degree at the Korea Advanced Institute of Science and Technology in 1990. He then worked at Hyundai Petrochemical Co., Ltd. (HPC) as a System and Process Control Engineer. In 1996 the beneficiary began studying at McMaster University, where he obtained his Ph.D. in 2001. Upon graduation, the beneficiary began working for the petitioner.

the beneficiary's Master's thesis advisor, explains that the thesis "was a conceptual analysis for development of model predictive control with process constraints, which offered important insights into practical applications of multivariate model predictive control." further asserts that at HPC, the beneficiary "was involved in implementing Advanced Process Control and Real-time Optimization System to

¹ Counsel maintains on appeal that the director's decision disregarded appropriate evidence.

ethylene product plant and benzene-xylene production plant, which benefited the company greatly.” Finally, [REDACTED] asserts that the beneficiary “planned Computer Integrated Manufacturing System (CIM) for [the] whole complex of HPC.” [REDACTED] does not list any employment with HPC on his curriculum vitae and does not explain how he has knowledge of the beneficiary’s contributions to that company, as opposed to the field in general. The record does not include letters from anyone at HPC, let alone high-level officials with the company.

[REDACTED] the beneficiary’s Ph.D. advisor, discusses the beneficiary’s thesis. Specifically, the beneficiary “comprehensively examined all the aspects of the existing approaches in process control to determine the strengths and weaknesses of past and current widely-used methods and applications.” This work is significant to both theory and practice, “since his work suggests the most up-to-date practical applications and gives insights into further advancement in the field.” [REDACTED] concludes that the beneficiary’s research “will be extensively applied to many industries, from the semiconductor industry to pharmaceutical and biomedical industries in those fields.”

[REDACTED] one of the beneficiary’s professors at McMaster University, provides similar information, concluding that the beneficiary “has offered a comprehensive insight into Statistical Process Control by examining and comparing all major aspects of existing approaches in process control.”

[REDACTED] Chief Executive Officer (CEO) for the petitioning company, asserts that the beneficiary “has been, and he continues to be instrumental in the development of research paradigms in order to enhance the technology and extend its application.” [REDACTED] President of North America & Software Development at the petitioning company, describes the beneficiary’s consulting responsibilities and asserts that the beneficiary’s knowledge of statistical processing control will extend the application of the petitioner’s products and benefit many industries. [REDACTED] concludes that the “application of [the beneficiary’s] research findings and original knowledge is very extensive in its range” and, thus, will benefit end users.

[REDACTED] a principal scientist and Director of Data Exploration Group at GlaxoSmithKline (GSK), asserts that the beneficiary is a senior consultant for the petitioner and that he has provided consulting services for GSK. [REDACTED] discusses the petitioner’s focus and praises the beneficiary’s abilities, but fails to identify a specific contribution by the beneficiary to the field.

The petitioner submits more independent letters on appeal. Most of these letters are brief and merely use boilerplate language attesting, “without hesitation,” to the beneficiary’s “contributions to the academic area of multivariate statistical analysis” and “international recognition.” These letters do not explain exactly what the beneficiary’s original contributions are and how they had already impacted the field as of the date of filing. Moreover, the letter from [REDACTED] Westerhuis is unsigned and, thus, has no evidentiary value. Finally, one of these letters is from [REDACTED] who, while stating that he has reviewed manuscripts authored by the beneficiary, fails to explain his concerns about the beneficiary’s critique of his work expressed in [REDACTED] letter to the editor discussed above.

[REDACTED] spells his name [REDACTED] on the reference letter, although his curriculum vitae and articles coauthored with the beneficiary list his name as [REDACTED]. Thus, we presume [REDACTED] to be the correct spelling.

The two letters that provide specifics are from [REDACTED] Professor Emeritus at the University of Maryland, and [REDACTED] a research specialist at Solutia, Inc. [REDACTED] provides information similar to that provided by [REDACTED] praises [REDACTED] group as a whole and asserts that the beneficiary has played a leading role in that group. [REDACTED] concludes that the beneficiary's dissertation "combined with subsequent industrial application will result in significant operating and capital cost benefits for actual operating US chemical plants and improve their material and energy utilization efficiency, thus making them more competitive in the global marketplace." [REDACTED] does not, however, identify any industry or company that has expressed interest in applying the beneficiary's dissertation work.

Finally, [REDACTED] praises [REDACTED] group, noting that a steel company funded a chair for [REDACTED] based on their savings as a result of his research. [REDACTED] does not suggest that the beneficiary was involved with that particular research. We will not presume the beneficiary's international recognition from that enjoyed by his Ph.D. advisor. [REDACTED] does address the beneficiary's work in particular, noting that it lead to five published articles and other conference presentations. [REDACTED] also praises the beneficiary's interaction with industry. Unlike the other letters submitted on appeal, [REDACTED] asserts that he has used one of the "models" developed by the beneficiary during his Ph.D. research. [REDACTED] does not explain the benefits of the beneficiary's model. Moreover, we note that [REDACTED] does not assert that the beneficiary ever developed his own model; rather, [REDACTED] asserts that the beneficiary's thesis involved evaluating models developed by others.

The letters do not persuasively demonstrate that the beneficiary has produced original research results, as opposed to evaluating the original research produced by others. While such evaluations may provide useful information to researchers, we are not persuaded that it constitutes original research on its own.

Even if we were to accept the beneficiary's thesis as original research, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. The record does not establish that the beneficiary's work represents a contribution consistent with international recognition.

In light of the above, we find that the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner submitted evidence that the beneficiary had authored four published articles, a rebuttal to [REDACTED] letter to the editor and two conference presentations as of the date of filing. 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 our position that publication of

scholarly articles is not automatically evidence of international recognition; we must consider the research community's reaction to those articles.

We will not presume the impact of a particular article from the prestige of the journal in which it appeared. Rather, we look for evidence of the impact of the individual article. Initially, the petitioner submitted what appear to be the search results from the Science Citations Index (SCI) reflecting a single citation for the beneficiary's 1996 article in the *Oil and Gas Journal*. The index reflects that while six articles are "related records," the actual number of articles citing the beneficiary's work is one. In response to the director's request for additional evidence, the petitioner submitted a compilation purportedly derived from the "ISI Web of Science." The petitioner provides no explanation for providing the compilation rather than a printout of the results themselves, a far more persuasive document. The compilation lists 10 citations for the beneficiary's article in the *Journal of Process Control* and nine articles for the beneficiary's article in the *AIChE Journal*. Of the ten citations for the former article, eight were published after the date of filing. Similarly, of the nine citations for the latter article, eight were published after the date of filing. Thus, even if we were to accept this list as evidence of the beneficiary's citations, as of the date of filing none of the beneficiary's articles had been cited more than twice.

We concur with the director that the beneficiary's citation record as of the date of filing was not indicative of international recognition. Thus, the petitioner has not established that the beneficiary meets this criterion.

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

Beyond the decision of the director,³ the petitioner has not established that it has offered the beneficiary a permanent research position.

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) requires:

An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field;

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field.

The regulation at 8 C.F.R. § 204.5(i)(2), provides, in pertinent part:

Permanent, in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

(Emphasis added.) On Part 6 of the petition, the petitioner indicated that the proposed employment was for a permanent position as a "Research Scientist in the Department of Research and Development." In a cover letter, [REDACTED] asserts that the beneficiary will be working to develop Fabstat, process monitoring software. [REDACTED] further states:

As a Research Scientist in the Department of Research and Development at [the petitioner], [the beneficiary] will expand research avenues in the area of multivariate data analysis and experimental design implementation and continue his outstanding work in process improvement and troubleshooting, fault detection and diagnosis, as well as pattern recognition, *in connection with providing consulting services* to [the petitioner's] clients in the pharmaceutical, medical and semiconductor industries.

(Emphasis added.) In a separate letter submitted at the same time, however, [REDACTED] asserts that the beneficiary has been working as a senior consultant in the Department of Research and Development. [REDACTED] provides the same information, further stating that the beneficiary "is currently engaged in consulting our clients from various industries in North America, and educating individuals and groups in Multivariate Process Control." [REDACTED] continues that the beneficiary "continues to be instrumental in the development of research paradigms in order to enhance the technology and extend its application."

In response to the director's request for additional information, the petitioner provided the initial job offer letter from [REDACTED] dated June 1, 2002. This letter offers the position of research scientist. While the position is described as "permanent," the letter states:

I must advise you that assuming that you accept our offer and that the contingencies are met, you will be an employee-at-will, which means that your employment is for no definite period and can be terminated either by you or [the petitioner] at any time for any reason with or without notice.

As stated above, [REDACTED] attests to the beneficiary's consulting services for GSK through the petitioner.

First, we note that the June 1, 2002 job offer letter expressly states that the position offered is for employment "at-will." The letter further states that the petitioner can terminate the beneficiary's employment for any reason with or without notice. As the beneficiary can be fired without cause, the job offer does not meet the regulatory definition of permanent quoted above.

Furthermore, while the petitioner characterizes the job as research position on the petition and the June 1, 2002 job offer letter provides the title "research scientist," it does not include the job duties or responsibilities. The remainder of the record strongly suggests that the beneficiary has been and will be working as a consultant.

Even assuming the position offered is a different position than the one currently held by the beneficiary, the record is not persuasive that developing Fabstat software is a research responsibility. It is noted that the Merriam-Webster Dictionary 595 (1974) defines research as a "careful or diligent search" or the "studious and critical inquiry and examination aimed at the discovery and interpretation of new knowledge." Simply having design responsibilities does not mean that an employee is necessarily a researcher. Software engineers, architects, and even artists design products, but they are not researchers.

It remains that the record contains inconsistencies regarding the nature of the proposed employment. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not resolved these inconsistencies such that we can conclude that the beneficiary will be working in a research position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.