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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[Redacted]

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: 11/2/2015  
WAC 01 116 51237

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

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the  
Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section  
101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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.

*Maia Johnson*

➤ Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition and his reasons therefore, and subsequently exercised his discretion to revoke the approval of the petition on October 27, 2004. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The self-petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a missionary. The director determined that the petitioner had not established that the prospective employer is a bona fide nonprofit religious organization or that it qualifies as a religious denomination. The director further determined that the petitioner had not established that she had the required two years membership in the denomination, that she had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the position qualifies as that of a religious worker, or that the prospective employer had extended a qualifying job offer to the petitioner.

On appeal, counsel submits a brief and additional documentation.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue on appeal is whether the petitioner established that her prospective U.S. employer qualifies as a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

With the petition, the petitioner submitted a copy of a July 2, 1998 letter from the IRS, indicating that in June 1978, Youth with a Mission (YWAM) was granted tax-exempt status under section 501(c)(3) of the IRC as an organization described in sections 170(b)(1)(A)(vi). The petitioner also submitted a copy of YWAM's articles of incorporation, which specified the purpose of the organization and contained the dissolution clause required by the IRS for purposes of granting tax-exempt status under section 501(c)(3), and a copy of two flyers about the organization.

The director determined that the petitioner had not established that the prospective employer qualified as a religious organization as defined in section 170(b)(1)(A)(i) of the IRC, and that only organizations that are defined under section 170(b)(1)(A)(i) qualifies as bona fide nonprofit religious organizations for purposes of this immigrant visa classification. We withdraw this determination by the director.

According to documentation from the IRS, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the IRC, which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the IRC, which pertains to publicly-supported organizations as described in section 170(c)(2) of the IRC, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section refers in part to religious organization, but to many types of secular organizations as well.

An organization that qualifies for tax exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the IRC can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution.

Because the IRS determination letter that classifies an entity under section 170(b)(1)(A)(vi) of the IRC cannot, by itself, establish that the entity is a religious organization, that determination letter cannot satisfy 8 C.F.R. § 204.5(m)(3)(i)(A). The other option, at that point, is to comply with 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine that the entity is a religious organization.

The organization can establish this by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can

establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

On appeal, counsel submits a copy of the Yates Memorandum and asserts that the evidence submitted comports with the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B) and the Yates Memorandum. However, the petitioner has not submitted a copy of the IRS Form 1023, as required by the regulation and enumerated in the Yates Memorandum. Therefore, the petitioner has not submitted sufficient documentation to establish that YWAM is a bona fide nonprofit religious organization as required by the statute and regulation.

The second issue to be discussed is whether the petitioner has established that her prospective U.S. employer is a religious denomination.

The petitioner’s prospective U.S. employer is [REDACTED]. According to its articles of incorporation, “[t]he specific and primary purpose” of [REDACTED] “is the advancement of the Christian Gospel, both inside and outside [of] the United States” and to “establish a structure elastic enough to include . . . all Christian denominations.”

The regulation at 8 C.F.R. § 204.5(m)(2) defines religious denomination as:

[A] religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship and religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious organization.

While the evidence submitted by the petitioner establishes that the organization is exempt from taxation under section 501(c)(3) of the IRC, it is insufficient to establish that [REDACTED] is a bona fide nonprofit *religious* organization.

In his NOIR of August 5, 2004, the director stated that the employing organization “is an inter-denominational organization without a specific creed or form of worship,” and “appears to be an organization tasked with providing social services to the community with a religious foundation.”

In response, [REDACTED] the secretary of [REDACTED] board of directors, in a letter dated August 30, 2004, stated that the organization is a member of [REDACTED] International, which has a governmental structure. [REDACTED] also stated that the members of [REDACTED] must also adhere to a statement of religious faith, must conform to the religious code of conduct contained within the statement of faith, and that it holds worship services. [REDACTED] also stated that the term “interdenominational” refers to organizations that accept “Christians from other denominations with the common goal of evangelizing.”

The petitioner submitted no evidence that [REDACTED] held religious services; however, the petitioner also submitted a copy of [REDACTED] statement of faith," which reiterates the provision in its articles of incorporation that it is an organization composed of many denominations.<sup>1</sup>

The evidence sufficiently establishes that the prospective U.S. employer is a denomination within the meaning of the regulation.

The third issue on appeal is whether the petitioner established that she had the required two years membership in the denomination.

The director determined that, as the petitioner had not established that the employing organization qualified as a religious denomination, the petitioner had not established that she had the required two years membership in the denomination.

As discussed above, the petitioner submitted sufficient evidence to establish that [REDACTED] is a religious denomination within the meaning of the statute and regulation. We therefore withdraw this determination by the director.

In a letter dated December 21, 2000, [REDACTED] base director, stated that the petitioner had been working for the Nevada organization since October 1996, and had worked for [REDACTED] in Amsterdam, Holland from September 1993 until September 1996. A copy of [REDACTED] year 1999 Form 990-EZ, Return of Organization Exempt from Income Tax, lists the petitioner as treasurer of the organization, and a copy of a "certificate of completion" indicates the petitioner completed the [REDACTED] discipleship training school in 1993.

The evidence sufficiently establishes that the petitioner was a member of [REDACTED] for two full years preceding the filing of the visa petition.

The fourth issue on appeal is whether the petitioner has established that she was continuously employed in a qualifying religious vocation or occupation for two full years preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

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<sup>1</sup> The document submitted by the petitioner in response to the NOIR is incomplete. However, on appeal, the petitioner submits a complete and legible copy of the document.

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on February 9, 2001. Therefore, the petitioner must establish that she was continuously working as a missionary throughout the two-year period immediately preceding that date.

As noted above, ██████████ stated that the petitioner had worked for ██████████ since October 1996, which he stated was the founding date of the organization. ██████████ stated that during her association with ██████████ in Nevada, the petitioner served as a missionary "doing evangelistic outreaches," and was, on the date of his letter (December 21, 2000), "leading an inner city ministry called ██████████ . . . a feeding ministry for the homeless." According to ██████████

[She] is also involved in the development and the weekly running of the ministry [20 hours per week], and all of its various facets, including recruitment and training of volunteers, support of leaders, promotion, development and conducting of evangelist outreaches as part of the ministry . . . .

[She] also spends part of her time [10 hours per week] as a graphic designer . . . and plays a valuable role in the creation of our communications and promotional materials . . . .

[She] has been involved [5 hours per week] during the past four years as a part of our team church has established the Las Vegas base . . . and has therefore been involved in the creation of our Discipleship Training School, serving as a trainer of young people to serve as Christian Missionaries . . . .

[For 3 hours per week, she] also served as a part of our leadership team, praying with us and other staff members for the overall growth of the ministry. She is also available to pray with us for the sick and needy in our community and in the organization.

██████████ stated that the petitioner was paid "all of the donations paid to the organization which have been designated for her," and that in 1999, the petitioner received over \$9,000, and that she was expected to receive over \$10,000 in 2000, less her "deductible ministry expenses." ██████████ also stated that the petitioner "files her tax return as a self-employed individual as this is authorized for religious workers under

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<sup>2</sup> All other evidence in the record reflects that YWAM-Nevada was founded in 1987. The petitioner submitted no evidence to explain this inconsistency. However, the conflict in dates does not affect our analysis of the evidence presented to establish that the petitioner has the requisite two years experience.

the Internal Revenue Code." The petitioner submitted copies of IRS reports reflecting that she reported income of \$9,041 in 1999, with taxable income of \$4,554.

In response to the director's request for evidence (RFE) dated August 26, 2003, the petitioner submitted a September 9, 2003 letter from [REDACTED] which further expounded on the petitioner's work with [REDACTED]

1. Leader of the Street Cafe . . . [She] co-pioneered this innercity Cafe ministry for the homeless and working poor and now leads this program, which, open two days each week, serves over 400 meals each week and sees 75-100 individual volunteers serve with the program each year.

The Cafe, with the assistance of its volunteers seek[s] to serve simple food to the guests and build relationships with them. To be a listening ear, to pray for them, to share Biblical truths and to encourage them in their endeavors to rebuild and establish their lives.

[She] oversees all aspects of volunteer recruitment . . . It is her role to also pursue it's [sic] sponsorship and donations for the program from churches and donation programs from stores . . . (16+ hours each week)

2. Serves on the Leadership Team of [REDACTED] (16+ hours each week)  
As one of a team of 5 leaders working with 21 staff, numerous volunteers and 300 youth who come through the programs of [REDACTED] each year, [she] plays a role in seeking to lead and guide, train and release the staff into ministry. This involves staff care, counseling, meetings as a team and prayer for the directional development for the ministry as a whole.

One of [her] roles in particular is to oversee the day to day base operations of [REDACTED] which involves operations management, troubleshooting and ensuring all departments function[s] together.

3. Serving as a Graphic Designer . . .  
[Creating] ministry flyers and designing for print to advertise the ministry and its programs. (8+ hours each week)

In addition, [she] may be called upon to lead a small group Bible Study as a part of our missionary training program to pray with students, to assist in evangelism programs, and the visitation of those in need.

The petitioner submitted a copy of her Form 1040, U.S. Individual Tax Return, for the year 2001, on which she reported gross income from self-employment of \$7,906 (\$4,358 net) and wages of \$325. The petitioner also submitted copies of two Forms W-2, Wage and Tax Statements, for 2001, reflecting wages paid to the petitioner by [REDACTED] of \$325.

The director determined that, as the organization did not qualify as a religious denomination, the petitioner's work with [REDACTED] was not related to a traditional religious function, and her work was not qualifying work experience for purpose of this visa preference petition.

We withdraw this statement by the director. As discussed above, the petitioner submitted sufficient evidence to establish that [REDACTED] is a religious denomination within the meaning of the statute and regulation.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

The petitioner submitted no evidence of any compensation that she received in the year 2000. Further, the petitioner submitted no evidence of the source of the funds she reported as self-employment income in 1999 and 2001. The petitioner submitted no other evidence to corroborate her employment during the qualifying two-year period. 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)).

The evidence does not establish that the beneficiary was continuously employed as a missionary for two full years prior to the filing of the visa petition.

The fifth issue to be discussed is whether the petitioner established that the position qualifies as that of a religious worker.

According to the regulation at 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work as a religious worker. To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The duties of the position are discussed above. In his letter of August 30, 2004, submitted in response to the NOIR of August 5, 2004, [REDACTED] stated that the focus of [REDACTED] is evangelism, and that the organization tailors each of its ministries to the audience it is trying to reach. He cites as an example its ministry to inner-city children, which involves Bible clubs that provide sports and games and help with homework.

The practical outworking of [the petitioner's] ministry to the homeless is that we serve food, we create a pleasant environment for the guests because we want to communicate value and worth to them. Once seated and served, we share the gospel of Christ, we teach a passage of scripture to them and we pray for them. We also always give an opportunity to receive Christ as Savior.

...

[The petitioner's] work with [REDACTED] involves taking church teams and youth groups out into the city to preach the gospel. Along with the Youth With A Mission Las Vegas team [she] regularly share[s] publicly on the street the teachings of Jesus Christ and seek to communicate to the crowd how these truths apply to our lives. We take teams with us as we go out so that they also may be trained and gain experience.

The evidence does not establish that the position is traditionally a salaried position within the petitioning organization [REDACTED] stated that the position is not compensated by [REDACTED] but rather that the petitioner is paid from donations designated specifically for her. From these donations, the petitioner must pay her "ministry expenses."

As the petitioner does not offer compensation for this position but rather relies upon designated donations to support the worker, the evidence does not establish that the position qualifies as that of a religious worker within the meaning of the statute and regulation.

The sixth issue on appeal is whether the petitioner established that the prospective employer had extended a qualifying job offer to the petitioner. The director did not address this ground for revocation in his NOIR.

The regulation at 8 C.F.R. § 205.2 provides in subsection (b):

*Notice of Intent.* Revocation of the approval of a petition [or] self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval.

As the director failed to provide the petitioner with notice that she had not established that she had received a qualifying job offer and failed to give the petitioner an opportunity to submit evidence in rebuttal, we withdraw the director's determination of revocation based on this stated ground.

Nonetheless, the petitioner has not established that her prospective U.S. employer is a bona fide nonprofit religious organization, that she was continuously employed in a qualifying religious occupation or vocation for two full years preceding the filing of the visa petition, or that the position qualifies as that of a religious worker, the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.