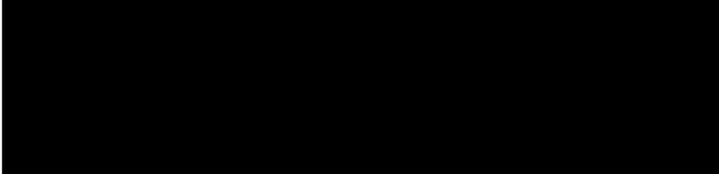


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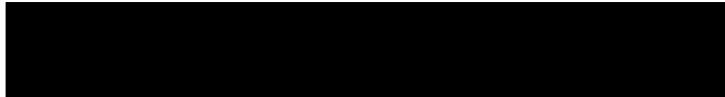


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FILE: SRC 05 252 53206 Office: TEXAS SERVICE CENTER

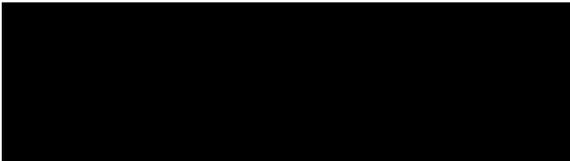
Date: MAR 06 2007

IN RE: Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an international freight forwarding business. It seeks to employ the beneficiary as a Middle East Project Coordinator and to continue his classification as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the ground that record failed to establish that the proffered position qualifies as a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, a letter from counsel, and copies of previously submitted materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as an international freight forwarding business, established in 1980, with nine employees and a gross annual income of \$5,442,245. The company offers a variety of services to its clientele, the petitioner explains, including material receiving and checking, shipment preparation, air and ocean shipment, export forwarding and documentation, material handling and expediting, and project material and logistic support. To expand and improve its business in the Middle East, the petitioner states, it needs the services of a Middle East Project Coordinator on an intermittent basis. The petitioner proposes to employ the beneficiary for three years, at a wage rate of \$22.56/hour, and describes the job as follows in its initial letter to the service center and in its response to the RFE:

[T]he Middle East Project Coordinator will coordinate a variety of activities surrounding the company's contracts and projects in the Middle East, including: meeting with customers to determine specific project needs, requirements and specifications; investigating and determining product options and availability; analyzing market conditions and delivery options; compiling data for use in preparing bid proposals; preparing actual bid proposals; ensuring contract fulfillment; and acting as liaison between the customers and the company. In addition to preparing the bid proposals, the Middle East Project Coordinator will also prepare and/or coordinate the preparation of the necessary sales and export documentation, including contracts and letters of credit. He will also be responsible for preparing and maintaining various reports pertaining to the orders and the projects.

According to the petitioner, the proffered position requires at least a bachelor's degree or the equivalent in a business-related subject, in addition to relevant work experience in the area of international sales in the Middle East and knowledge of industrial and oil related products. The beneficiary is qualified for the position, the petitioner declares, by virtue of his bachelor of arts degree in economics and commerce from the University of Bombay in India, awarded on February 11, 1984, along with fifteen years of international business experience in Saudi Arabia.

In her decision the director reviewed the evidence of record and concluded that it failed to establish that the proffered position qualifies as a specialty occupation. The director discussed two occupational resources submitted by the petitioner – the *Council of Logistics Management, Careers in Logistics* and the *Profile of Purchasing and Supply Management Professionals, 1999 Edition* – and cited information therein which does not indicate that a bachelor's degree in a specific specialty is required for entry into such positions. The director implied that the proffered position falls within the broad occupational field of “purchasing managers, buyers, and purchasing agents,” as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, and referred to information in the *Handbook* indicating that a bachelor's degree in a specific specialty is not a minimum educational requirement for entry into such a position. The director discussed an opinion letter from a professor at Pace University on the educational requirements for the proffered position, as well as 24 job announcements in the record, and determined that they did not establish that a baccalaureate degree in a specific specialty is the minimum educational requirement for the proffered position. The director concluded that the record did not establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the record is sufficient to satisfy the petitioner's burden of proof and resubmits copies of previously filed materials as evidence that the proffered position qualifies as a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F.Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

Though the director and the petitioner appear to view the proffered position as falling within the *Handbook's* broad occupational field of "purchasing managers, buyers, and purchasing agents," the duties of the job do not accord with any of those occupational subcategories which focus on a company's procurement of goods and services for resale or internal use. See *Handbook*, 2006-07 edition, at 64. Based on the job duties described by the petitioner, the AAO determines that the proffered position involves a combination of duties that fall under two different occupational categories in the *Handbook*. One is "general and operations manager," a sub-category of the broad occupational category called "top executives." The duties of the occupation are described as follows in the DOL *Handbook, id.*, at 68:

*General and operations managers* plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of . . . operations managers may overlap the duties of chief executive officers.

The other occupational category applicable to the proffered position is "transportation, storage, and distribution manager," the duties of which are described as follows in the *Handbook, id.*, at 662: "Plan, direct, or coordinate transportation, storage, or distribution activities in accordance with governmental policies and regulations. Includes logistics managers."

The *Handbook* describes the educational background and experience of top executives, including operations managers, as follows:

The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts . . . .

Some top executives in the public sector have a background in public administration or liberal arts. Others might have a background related to their jobs . . . .

Many top executive positions are filled from within the organization by promoting experienced, lower level managers when an opening occurs. In industries such as retail trade or *transportation*, for instance, it is possible for individuals *without a college degree* to work their way up within the company and become managers. [Emphasis added.] However, many

companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

*Id.* at 68-69. The foregoing information indicates that degrees in a variety of different fields are suitable for many general and/or operations manager positions, and that some individuals attain such positions without a college degree. In the transportation industry, of which the petitioner is a part, relevant managerial experience may substitute for a baccalaureate degree of any sort. Thus, there is ample opportunity to enter into a general or operations manager position without a baccalaureate or higher degree in a specific specialty.

As for transportation, storage, and distribution managers – including logistics managers – the *Handbook* states the following: “Most significant source of education or training: Work experience in a related occupation.” *Id.* at 662.

Based on the foregoing information the AAO concludes that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into the position.

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has submitted multiple internet job advertisements from other companies for related positions as evidence of an industry standard requiring a specialty degree. While most of the advertisements state that a bachelor’s degree is required, the majority do not indicate that the degree must be in a specific specialty. Many of the advertising companies are not in the same line of business as the petitioner, and there is no evidence in the record that any of them are similar to the petitioner in their scale of operations. Thus, the internet job advertisements do not establish that a degree requirement in a specific specialty is common to the petitioner’s industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record includes an opinion letter from Dr. [REDACTED], professor of marketing at Pace University’s Graduate School of Business, who states that he is a consultant with professional experience in the business and marketing fields. Dr. [REDACTED] declares that “it is customary for companies positioned in the field of international trade and freight forwarding, such as the [petitioner], to establish a specialty-level requirement for those professionals who hold responsibility for managing core trading, procurement, and contractual activities.” Dr. [REDACTED] finds that “the instant position of Middle East project coordinator fits into this management category, and . . . is specialized in nature, requiring a bachelor’s degree in business administration, business management, or a closely related field.” Dr. [REDACTED] does not identify any specific positions in other companies as a basis for his finding, however, and provides no evidence about specific employees in those positions and the degrees they possess. Nor does Dr. [REDACTED] cite any studies, industry surveys, or other business data in support of his conclusion that the job duties could not be performed without a baccalaureate level of education in a business-related specialty, a conclusion which conflicts with information in the DOL *Handbook* (a compilation of national data from industry surveys, literature, interviews, and other business data) that a baccalaureate degree in a specific specialty is not normally required for entry into the occupational fields of general and operations managers or transportation, storage, and distribution managers. Lastly, Dr. [REDACTED] does not establish his expertise in regard to the hiring requirements of the freight forwarding industry, as there is no evidence in the record that he has any work or consulting experience in the industry. Going on record without supporting documentation does not satisfy the

petitioner's burden of proof. See *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)).

CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. See *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). The AAO determines that the opinion letter from Professor Gould is not persuasive evidence that a baccalaureate or higher degree in a specific specialty, or its equivalent, is a common requirement in the petitioner's industry for entry into parallel positions in similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty. The petitioner has submitted no evidence demonstrating the uniqueness of the position, and has not demonstrated that the duties of the job distinguish the position in any decisive way from other general/operations managers or transportation, storage, and distribution managers, such that a degree in a specific specialty would be required. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a baccalaureate or higher degree in a specific specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties of the proffered position are so specialized and complex that they require knowledge usually associated with a baccalaureate or higher degree in a specific specialty. The petitioner has not shown that the duties of the position exceed the scope of those typically performed by a general or operations manager, or by transportation, storage, and distribution managers, which the *Handbook* indicates are occupations that do not normally require baccalaureate level knowledge in a specific specialty. Accordingly, the position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S. § 1101(a)(15)(H)(i)(b).

Beyond the decision of the director, the record does not establish that the beneficiary is qualified to perform the services of a specialty occupation. Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or

- (C) (i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service [CIS] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education,

specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as: (i) Recognition of expertise in the specialty occupation by at least two recognized authorities <sup>1</sup> in the same specialty occupation; (ii) Membership in a recognized foreign or United States association or society in the specialty occupation; (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers; (iv) Licensure or registration to practice the specialty occupation in a foreign country; or (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary does not qualify to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) because he does not have a U.S. baccalaureate or higher degree, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) because he does not hold a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) because he does not have an unrestricted state license to practice the specialty occupation.

In order for the beneficiary to qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform services in a specialty occupation, the record must establish that he has a combination of education, specialized training and progressively responsible work experience equivalent to a U.S. baccalaureate or higher degree in the specialty occupation, as evidenced by one or more of the documentary forms set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D). The record includes an evaluation of the beneficiary's academics and work experience by [REDACTED] which concludes that the beneficiary's bachelor of arts degree in economics and commerce from the University of Bombay in India is equivalent to three years of academic studies on a baccalaureate track at a U.S. college or university, that the beneficiary's work experience in India is equivalent to at least one additional year of university-level training in business administration in the

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

United States, and that the beneficiary's combination of education and work experience is equivalent to a bachelor's degree in business administration from a U.S. college or university.<sup>2</sup>

There is no evidence that the Silvergate evaluation is authored by an official with authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university with a program for granting such credit. The evaluation is signed by Dr. [REDACTED] who states that he is an associate professor of biology at Brooklyn College with "the authority to grant college level credit for experience, training *and/or courses* taken at other U.S. or international universities." The foregoing language does not indicate that Professor [REDACTED] has the authority to grant college-level credit based exclusively on training and/or work experience – *i.e.*, without any educational component. Moreover, Dr. [REDACTED], as a professor of biology, would not appear to have the requisite expertise or authority to grant credit for work experience in the business field. Furthermore, there is no evidence in the record, such as a letter from a senior official of Pace University, confirming that Professor Eshel has the authority, and the institution has a program, to grant college-level credit for training and/or experience in the field of business. Accordingly, the evaluation cannot be considered as evidence of the beneficiary's U.S. degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Since the Silvergate evaluation reviews the beneficiary's work experience as well as his education in India, its conclusion as to the beneficiary's U.S. degree equivalency cannot be considered as evidence of the beneficiary's qualification under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) to perform services in a specialty occupation. The AAO notes that the evaluation includes a finding that the beneficiary's educational degree in India is equivalent to three years of study at a U.S. college or university, which is not equivalent to a baccalaureate degree in the United States.

Nor does the record establish that the beneficiary has the equivalent of a baccalaureate degree in a specific specialty through a combination of education, specialized training, and/or work experience in the specialty occupation or related areas, and recognition of expertise therein, as required to meet the alternative qualifying criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Since the beneficiary's education in India has been evaluated as equivalent to three years of academic study on a baccalaureate track in the United States, the petitioner must show that the beneficiary has at least three years of progressively responsible work experience in a business-related specialty to account for a fourth year of academic study in a business specialty in the United States. There is no documentation in the record, however, to corroborate any of the work experience cited in the evaluation report. Going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici, id.* Even if there were such documentation in the record, the petitioner would have to demonstrate that the beneficiary has at least three years of experience in a business-related specialty while working with peers, supervisors, or subordinates who have a degree or its equivalent in a specialty occupation, and that the beneficiary has documented recognition of expertise in the specialty. As the record does not contain such documentation, the beneficiary's work experience cannot be counted for the purpose of determining degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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<sup>2</sup> A degree with a generalized title such as business administration, without further evidence of a specific course of study closely related to the proffered position, does not establish that the beneficiary is qualified to perform services in a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1988).

For the reasons discussed above, the petitioner has failed to establish that the beneficiary is qualified to perform services in a specialty occupation. On this ground as well, the petition may not be approved.

Notwithstanding the service center's approval of a previous H-1B petition on behalf of the beneficiary, the current petition to continue the beneficiary's H-1B classification cannot be approved unless the record establishes current eligibility. CIS is not required to approve a petition when eligibility has not been demonstrated merely because of a prior approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the petitioner's record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Moreover, the AAO is never bound by a decision issued by a service center or a district director. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

**ORDER:** The appeal is dismissed. The petition is denied.