D7

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

APR 23 2001

FILE: SRC 02 254 51806 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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

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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

The petitioner claims to operate retail stores in Houston, Texas. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its vice-president of operations. The director determined that the petitioner had failed to establish that: (1) a qualifying relationship existed between the U.S. and foreign entities; (2) the U.S. entity and the foreign entity have been doing business; and (3) the beneficiary has been and will continue to be employed by the U.S. entity primarily in a managerial or executive capacity.

On appeal, counsel contends that a qualifying relationship does exist between the U.S. and foreign entities; that the U.S. and foreign entities are doing business; and that the beneficiary has been and will continue to be employed by the U.S. entity in a primarily managerial or executive position.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

> *Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the Unite States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
>
> (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization with the three years preceding the filing of the petition.
>
> (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended serves

in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section;

B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H);

C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

E) Evidence of the financial status of the United States operation.

According to the evidence contained in the record, the petitioner claims to be in the retail store business. The petitioner claims to be an affiliate of AutoLand India. The petitioner was established in 2001. The petitioner seeks the continuation of the beneficiary's services as vice-president of operations for a period of three years, at a yearly salary of $21,000.00.

The first issue in this proceeding is whether a qualifying relationship exists between the U.S. and foreign entities.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. §§ 214.2(l)(1)(ii) define, in pertinent part, "parent," "branch," "subsidiary," and "affiliate" as:

> *(I) Parent* means a firm, corporation, or other legal entity which has subsidiaries.
>
> *(J) Branch* means an operation division or office of the same organization housed in a different location.
>
> *(K) Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
>
> *(L) Affiliate* means
>
> > (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
> >
> > (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

In the instant matter, the petitioner claims to be an affiliate of the foreign entity. In a letter of support, the petitioner stated that the U.S. entity operates four stores in Texas and employs more than eighteen employees. The petitioner further stated that the U.S. entity is majority owned and controlled by [redacted] and [redacted] The petitioner stated that the foreign entity is majority owned and controlled b[redacted] and [redacted] and that therefore the U.S. and foreign entities are affiliates. As evidence of the alleged affiliation, the petitioner submitted copies of Articles of Incorporation, Shareholding Patterns, Corporate Income Tax Returns, and Share Certificates.

The petitioner submitted a copy of the U.S. entity's Corporation Income Tax Return for 2001, which indicated tha[redacted]owns 25 percent and Shamim S. Hafizi owns 10 percent of the corporate stock. The 2001 annual income tax return also reported that no individual or organization owned 50 percent or more of the corporation's voting stock. It also reported that at no time during the tax year did a foreign person own 25 percent or more of the company's stock. The U.S. entity's Articles of Incorporation, article Four, indicates that the aggregate number of shares which the Corporation will have authority to issue is One Thousand (1,000), with a par value of One Dollar ($1.00). The petitioner also submitted copies of the U.S. entities stock certificates, which demonstrated that [redacted]each owned 250 shares of stock in the U.S. entity. It also showed tha[redacted] and [redacted]ach owned 100 shares of stock; and th[redacted] and [redacted]each owned 50 shares of stock in the U.S. entity.

In response to the director's request for additional evidence regarding the existence of a qualifying relationship between the U.S. and foreign entities, the petitioner submitted as evidence copies of stock

certificates and a list of shareholders representing the U.S. and foreign entities. The stock certificates read as follows:

BDH ENTERPRISES, INC.

CERTIFICATE #	HOLDER'S NAME	#OF SHARES ISSUED	DATE ISSUED	STATUS
01	[redacted]	250	01/11/01	
02		250	01/11/01	
03		100	01/11/01	
04		100	01/11/01	
05		50	01/11/01	
06		50	01/11/01	
07		50	01/11/01	
08		50	01/11/01	CANCELLED
09		50	01/11/01	CANCELLED
10		50	01/11/01	CANCELLED
11		75	05/13/02	
12		75	05/13/02	

AUTOLAND INDIA PVT. LTD.

HOLDER'S NAME	CERTIFICATE #	# OF SHARES	DISTINCTIVE #
[redacted]	01	10	01-10
	02	10	11-20
	04	10	31-40
	07	365	81-426
	08	365	426-790
	09	15	791-805
	10	25	806-830
	41	100	16901-17000
	44	100	18901-19000
	20	600	6001-6600
	40	150	16751-16900
	47	250	16501-16750
	42	750	18001-18750
	46	250	16251-16500
	05	10	41-50
	13	40	921-960
		700	13601-14300

	250	19501-19750
03	10	21-30
12	40	881-920
	700	12901-13600
	250	19251-19500
06	10	51-60
14	40	961-1000
	700	14301-15000
49	500	15501-16000
	500	17501-18000
	250	19751-20000
15	1000	1001-2000
16	1000	2001-3000
17	1000	3001-4000
18	1000	4001-5000
19	1000	5001-6000
21	1000	6601-7600
22	1000	7601-8600
23	1000	8601-9600
24	1000	9601-10600
25	1000	10601-11600
26	600	11601-12200
43	150	18751-18900
45	250	16001-16250
48	500	15001-15500
	500	17001-17500
11	50	831-880
27	700	12201-12900
	250	19001-19250

The director denied the petition after determining that the record did not establish that a qualifying relationship exists between the U.S. and foreign entities. The director stated that the petitioner had not established that the same people own the same percentage of the foreign entity's stock as own shares of stock in the U.S. entity. The director further stated that based upon the voluminous amount of discrepant information and inconsistencies, the director could not conclude that the petitioner's accounts were reliable and therefore, concluded that there was no qualifying relationship between the U.S. and foreign entities.

On appeal, counsel disagrees with the director's decision and submits a brief and additional evidence in support of his contention that a qualifying relationship does exist between the U.S. and foreign entities. Counsel states that the evidence submitted was sufficient to establish an affiliate relationship. Counsel asserts

that with respect to the U.S. entity's 2001 income tax return, the evidence established that two of the share holders owned 35 percent of the company and that the other shareholders were not listed on the 2001 tax return because they resided outside of the United States. Counsel further contends that since the U.S. entity and foreign entity are majority owned and controlled by the same group of individuals, who each own approximately the same percentage of ownership in each of the two companies, the companies are affiliates.

Contrary to counsel's contention, the petitioner has not submitted sufficient evidence to establish that a qualifying relationship exists between the U.S. and foreign entities. The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between U.S. and foreign entities for purposes of a nonimmigrant visa petition. *Matter of Siemens Medical Systems, Inc.,* 19 I&N Dec. 362 (Comm. 1986); *Matter of Hughes,* 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology International,* 19 I&N Dec. 593, 604 (Comm. 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International, supra.*

To establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In this case the U.S. entity is owned by seven individuals, and the foreign entity is owned by ten individuals. Absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the petitioner has not established that the same legal entity or individuals control both entities.

In the instant matter, the petitioner submitted evidence to show that the U.S. entity has a total of 1000 shares of company stock that can be issued. The record also demonstrates that shares of stock in the U.S. entity previously owned by [redacted] 50 shares), [redacted] (50 shares), an[redacted] (50 shares) had been cancelled. The record further shows that these shares of stock in the U.S. entity were reissued to [redacted] (75 shares) and [redacted] (75 shares) on May 13, 2002. The share holding pattern submitted by the petitioner shows that neither [redacted] own shares of stock in the U.S. entity. Evidence of record thus demonstrates that different groups of individuals own different shares of stock in the U.S. and foreign entities. There has been no evidence presented to show that both entities are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity. No voting proxies or other agreements have been included in the record showing that any degree of control of both entities has been formally relinquished by other shareholders in favor of one of the individuals holding shares in both companies. Furthermore, the evidence has failed to show that an individual, or identical group of individuals have effective de jure or de facto control of both organizations. Thus, the companies are not affiliates. Based on the evidence submitted, it is concluded that the petitioner has not established that a qualifying relationship exists between the U.S. and foreign organizations.

The second issue in this proceeding is whether the U.S. entity and foreign entity have been doing business as defined in the regulations.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

> *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In support of its claim of doing business, the petitioner initially submitted copies of the U.S. entity's Articles of Incorporation, share certificates, lease agreements, bank statements, income tax return for 2001, Employer Quarterly Tax Report for 2001, business licenses and permits, and an unaudited financial statement for 2001. In response to the director's Notice of Intent to Deny, regarding this same issue, the petitioner submitted copies of the U.S. entity's bank statements, sales invoices for 2002, lease agreements, utility bills, licenses, DBA Certificates, Assumed Name Certificate, certificates of occupancy, a Sale Tax Certificate and insurance policy, and Employer's Quarterly Tax Report for 2002.

In support of its initial claim that the foreign entity has been doing business, the petitioner submitted copies of the foreign entity's Articles of Incorporation, tenancy agreement, lease rent receipts, business licenses and permits, appraisal note, shareholding pattern, income tax returns, auditor's financial reports, bank statements, utility bills, newspaper articles and brochures, and photos. In response to the director's Notice of Intent to Deny, with regard to this same issue, the petitioner submitted copies of the foreign entity's lease agreement, utility bills, license and permits, list of employees, 2001 and 2002 Income Tax Returns, financial statements, bank statements, sales invoices.

The director determined that the petitioner had not submitted sufficient evidence to establish that that the U.S. entity continuously and systematically engaged in the provision of goods and services. The director also determined that the petitioner had failed to submit sufficient evidence to establish that the foreign entity has been doing business.

On appeal counsel claims that the petitioner operates and manages four convenience stores, which provide regular, systematic, and continuous provision of retail store products to the general public. Counsel also states that the petitioner initially submitted with the petition and in response to the director's request for additional evidence copies of the U.S. entity's Corporate Income Tax Returns for 2001, bank statements, purchase invoices, sales tax returns, utility bills, an affidavit written in support of the petition, and Quarterly Federal Payroll Tax Returns for the year 2001 and for the period from January 1, 2002 to August 30, 2002.

Counsel also disagrees on appeal with the director's conclusion that the petitioner has submitted insufficient evidence to show that the foreign entity has been systematically engaged in the provision of goods and services. As evidence of record, the petitioner submits on appeal copies of the foreign entity's Memorandum of Association, Certificate of Incorporation, Audited Financial Statements, Tenancy Agreement, License Application, license and permit, Employment Tax Reports, bank statements, and an affidavit in support of the petition.

In review of the record, the petitioner has submitted sufficient evidence to show that the U.S. entity and the foreign entity have been doing business in that they have been systematically engaged in the provision of goods and or services. Counsel has presented plausible explanations to overcome the director's objections. Therefore, the director's decision with regard to the doing business issues will be withdrawn.

The third issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary's employment with the U.S. entity has been and will continue to be primarily managerial or executive in nature.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means an assignment within an organization in which the employee primarily—
>
> (i) Manages the organization, or a department, subdivision, function, or component of the organization;
>
> (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
>
> (iii) If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
>
> (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

> The term "executive capacity" means an assignment within an organization in which the employee primarily—
>
> (i) Directs the management of the organization or a major component or function of the organization;
>
> (ii) Establishes the goals and policies of the organization, component, or function;
>
> (iii) Exercises wide latitude in discretionary decision-making; and
>
> (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner stated that the beneficiary has been and will continue to perform managerial or executive duties for the U.S. entity. The petitioner described the beneficiary's proposed duties as:

> The Beneficiary will continue to be employed as the Vice President-Operations of the Petitioner, and will continue to be responsible for performing the following duties: such duties to include: hiring and firing managers; supervising subordinate employees; overseeing preparation of marketing reports; reviewing and analyzing sales data; establishing and implementing marketing policies to manage and achieve marketing goals; managing the company; and overseeing marketing campaigns developed by subordinate managers.
>
> In performance of his duties, the Beneficiary will receive minimum supervision from the Board of Directors. Beneficiary will exercise wide discretion and latitude in the performance of his duties.

The petitioner submitted as evidence copies of the U.S. entity's Corporate Tax Returns (IRS Form 1120) for 2001, Employer's Quarterly Federal Tax Return for 2001, employee W-2 forms for 2001, and copies of the beneficiary's W-2 form and personal income tax returns for 2001.

The director determined that the petitioner had not submitted sufficient evidence to establish the beneficiary's eligibility, and thereafter submitted a Notice of Intent to Deny pertaining to, in part, the beneficiary's and his subordinate's position descriptions and duties performed in the United States. The director specifically requested the petitioner "describe past and current staffing including names, position titles, position duties, qualifications, date hired, hours worked per week, the pay per hour for each, and the address where the person worked (including the beneficiary)." The director requested that the petitioner provide copies of the company payroll records and the beneficiary's pay stubs. The director also requested that the petitioner provide a copy of the beneficiary's W-2 tax form and personal income tax return for 2001.

In response to the director's request for additional evidence, the petitioner provided a copy of the beneficiary's W-2 tax form and personal income tax return for 2001. The petitioner also provided copies of the U.S. entity's form W-3 Transmittal of Wage and Tax Statements, Quarterly Federal Payroll Tax Return, and Employer's Quarterly Federal Tax Return for 2001 and 2002.

The director denied the petition, determining that the record contained insufficient evidence to demonstrate that the beneficiary had been or would continue to be employed primarily in a managerial or executive capacity.

Counsel disagrees with the director's decision and states that the beneficiary has been and will continue to perform duties in a managerial or executive capacity. Counsel specifically states:

> The Beneficiary will continue to be employed as the Vice President-Operations and he will be responsible for such duties to include: hiring and firing managers; supervising subordinate employees; overseeing preparation of marketing reports; reviewing and analyzing sales data; establishing and implementing marketing policies to manage and achieve marketing goals; managing the company; and overseeing marketing campaigns developed by subordinate managers, including supervision of managers, who in turn supervise subordinate employees.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive position. In evaluating whether the beneficiary is employed in a primarily managerial capacity, the AAO will look first to the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Although the petitioner contends that the beneficiary

will be responsible for the day-to-day development and operation of the U.S. company, there has been no documentary evidence submitted detailing how he will carry out those duties. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary would be directing the management of the U.S. entity. There is no evidence submitted to show what percentage of time will be attributed to each of the beneficiary's managerial or executive versus non-qualifying duties. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). The beneficiary's position description is too broad and general to establish that the preponderance of his duties have been or will be managerial or executive in nature. The following duties are without any context in which to reach a determination as to whether they would be qualifying as executive: overseeing preparation of marketing reports; reviewing and analyzing sales data; establishing and implementing marketing policies to manage and achieve marketing goals; managing the company; and overseeing marketing campaigns developed by subordinate managers.

The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that he has or will be establishing goals and policies, exercising a wide latitude in discretionary decision-making, or receive only general supervision or direction from higher level individuals. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Paraphrasing the regulations as a substitute for a day-to-day description of the beneficiary's job duties is insufficient to demonstrate the beneficiary is acting in an executive or managerial capacity. *Fedin Bros. Co., Ltd. V. Sava,* 724 F.Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd,* 905 F.2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner,* 1977 WL 188942 at *5 (S.D.N.Y.). There has been no evidence presented to demonstrate what goals and policies have been and will be established by the beneficiary in his capacity or the percentage of time he has to devote to such tasks.

Further, there is insufficient detail regarding the actual duties of the assignment to overcome the issues raised by the director regarding the numerous inconsistencies and discrepancies contained in the record. Although specifically requested by the director, the petitioner has failed to provide copies of payroll records and the beneficiary's pay stubs, or a description of past and current staffing including names, position titles, position duties, qualifications, dates hired, hours worked per week, the pay per hour for each employee, and the address where the individual worked (including the beneficiary). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava, supra at 1108.* The actual duties themselves reveal the true nature of the employment. *Id* And although the beneficiary claims to supervise subordinate employees, the petitioner has not demonstrated that the beneficiary has been or will be primarily supervising a subordinate staff of professional, managerial, or supervising personnel. *See* section 101(a)(44)(A)(ii) of the Act. Although the record shows that other individuals have been employed by the U.S. entity, the record does not reflect that the employees are professional, maintain supervisory positions, work on a full-time basis, or that they take direction from the beneficiary in performing their duties.

The record does not demonstrate that the beneficiary primarily manages an essential function of the organization. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. An employee who

primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

Accordingly, the petitioner has failed to demonstrate that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.