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

U.S. Citizenship and Immigration Services

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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)

IN 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

DISCUSSION: The Director, Nebraska 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 filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Texas that provides engineering services for the modification and repair of aircraft. The petitioner claims that it is the affiliate of Field Aviation Company, located in Calgary, Canada. The petitioner now seeks to employ the beneficiary for three years as a Repair Engineer.

The director denied the petition concluding that the petitioner did not establish that the beneficiary had been employed abroad by a qualifying employer in a specialized knowledge capacity for the requisite one year within the three years prior to filing the petition.

Counsel for the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel asserts that Citizenship and Immigration Services (CIS) misunderstood "the position offered, the specialized skill of the beneficiary, [and] the specialized proprietary knowledge used in the international business [of the petitioner]" in concluding that the beneficiary has not been employed in a specialized knowledge capacity. Counsel submits a brief in support of the appeal, as well as copies of previously submitted documents.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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 (l)(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 within 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 services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The issue in the present matter is whether the petitioner has established that the beneficiary's prior employment abroad was in a position that involved specialized knowledge as required in the regulation at 8 C.F.R. § 214.2(l)(3)(iv).

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

> [S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes or procedures.

In a letter submitted with the initial petition, dated July 23, 2002, the petitioner described the beneficiary's duties with his foreign employer as follows:

> [The beneficiary's] most recent position in Canada was as a repair engineer involved in aircraft repair and modification programs, performing the same duties as he will perform in the U.S., which are described [below.] He has received several years of prior experience and several training programs by means of which he developed his expertise in the services and processes of [his foreign employer.]

The petitioner described the beneficiary's prospective job duties in the United States as follows:

> [The beneficiary's] position [is] as a repair engineer directing the engineering of structural repairs and modifications services provided by the [petitioner.] This will give him the responsibility to utilize the specialized knowledge needed to provide the [petitioner's] services. It is important to realize that the services being sold by [the beneficiary's foreign employer] are unique. [The beneficiary's] special knowledge of the engineering and implementation of repairs and modifications to aircraft [will] enable him to provide the company's services.

On November 22, 2002, the director issued a request for evidence. Specifically, the director requested: (1) evidence that the beneficiary's duties with his foreign employer and his prospective duties with the petitioner involve specialized knowledge, thus establishing that the beneficiary has special knowledge of the petitioner's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the petitioner's processes or procedures; (2) evidence of the beneficiary's attendance at, and completion of, training programs, including the approximate duration of each program; (3) photographs of the physical premises of the petitioner and the beneficiary's foreign employer, and; (4) evidence that the petitioner and the beneficiary's foreign employer have a qualifying corporate relationship, establishing common ownership and control of both entities.

On February 13, 2003, the petitioner submitted a response, including: (1) a 2001 annual report for Hunting PLC, showing that the petitioner and the beneficiary's foreign employer are wholly-owned subsidiaries; (2) an audited financial statement for the petitioner, covering 2000 and 2001; (3) letters from four clients of the beneficiary's foreign employer attesting to the particular services that the beneficiary's foreign employer provides; (4) an FACi PDA aircraft parts list; (5) a statement from the beneficiary's foreign employer providing a summary of the aircraft modification and repair projects it has undertaken; (6) a chart reflecting the petitioner's ownership of other companies; (7) a letter from the beneficiary's foreign employer, further explaining the purpose for bringing the beneficiary to the United States; (8) certificates and transcripts for the beneficiary's academic and technical training; (9) a copy of the beneficiary's Canadian aircraft maintenance engineer license, and; (10) photographs of the physical premises of the petitioner and Field Aviation West, Ltd.

The letter submitted by the beneficiary's foreign employer provides the following additional information regarding the beneficiary's experience and the decision to employ him in the United States:

> [The beneficiary] has been responsible to [sic] supervise a crew of repair technicians working directly on the aircraft. He is tasked to inspect the aircraft for repairs, highlight[] discrepancies, [and] plan and cost the repair. [The beneficiary] has also had close contact with customers explaining planning and costs. He then is responsible to [sic] direct that the repairs were [sic] carried out in accordance with approved data.
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> Having [the beneficiary] able to travel to the U.S. would serve a number of corporate purposes[.] [I]n particular, it enhances the responsiveness of the U.S. company by bringing [the beneficiary's] special knowledge of supervision, planning expertise and his knowledge of special processes to the local company that he is assisting. This will permit an expansion of the U.S. operator by bringing an individual with knowledge of the products (Canadian, Brazilian, and British built aircraft), techniques and services of [the beneficiary's foreign employer.] It is usually not possible for the U.S. company to locate someone with [the beneficiary's] special knowledge in the U.S.

* * *

> While employed with [the beneficiary's foreign employer, the beneficiary] has had training as well as experience with brush anodizing to prevent corrosion of components. These processes are used extensively on the Bombardier as well as British Aerospace aircraft. He has also been trained at [sic] planning and estimating procedures. These require the proficient use of blueprints as well as aircraft type manuals. [The beneficiary] has also received training in metal binding procedures and test procedures. These are used on the British Aerospace aircraft such as the BAE 146 jet liner. [The beneficiary] is also trained on the proper use of the bore scope. This instrument allows the specialist to examine the inside of a component for damage of foreign objects. Bringing his ideas and experience to the field in the U.S. will permit the expansion of the U.S. operations, which is crucial to [the petitioner's] goals.

On April 4, 2003, the director denied the petition. The director determined that the petitioner had not shown that the beneficiary had been employed abroad by a qualifying employer in a specialized knowledge capacity for the requisite one year within the three years prior to filing the petition. Specifically, the director stated that the petitioner failed to establish that "the beneficiary's knowledge is different and advanced, or uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the field of aircraft repair." The director noted that, "[a] review of the beneficiary's training certificates in [brush anodizing, brush cad plating, and proper use of a bore scope] indicates that the training was accomplished in a very short period of time, and could, therefore, be easily transferred to any employee familiar with aircraft repair." The director further contends that, as some of the aircraft in which the petitioner specializes are made by one of the largest airplane manufacturers in the world, there must be many airplane repair facilities and technicians who are familiar with the relevant products and repair procedures.

In an appeal, filed May 7, 2003, counsel asserts that the beneficiary has been, and will be, employed in a specialized knowledge capacity with his foreign employer, and that CIS misunderstood "the position offered, the specialized skill of the beneficiary, [and] the specialized proprietary knowledge used in the international business [of the petitioner]." Counsel submits a brief in support of the appeal, as well as copies of previously submitted documents.

In his brief, counsel explains that:

> [The petitioner] has a special niche market in aircraft repair and modification whereby its employees are needed to design repairs and train U.S. workers. . . . The U.S. employees of the [petitioner's clients] do the actual work. [The beneficiary's foreign employer] has an expertise that is intellectual in nature because of experience.

Counsel further states that:

> [The beneficiary] has been employed for several years and holds a supervisory position. [The beneficiary] directs the engineering of repairs and modifications. This expertise comes not from education at any college or institute, which is prerequisite to becoming an aircraft technician, but comes from years of experience with the employer and increasing

> responsibility. . . . [The beneficiary] has spent several years starting from the level of an aircraft technician and advancing to the level of repair engineer responsible for engineering and implementing repair work. The level of competence is far beyond that of a mechanic – he has to have understanding of engineering but not at the level of a university educated engineer. There are no colleges that teach repair engineering on the particular aircraft in question and nobody teaches the methodology used by [the beneficiary's foreign employer.] [The beneficiary] is uniquely qualified with special knowledge. . . . [The beneficiary] has been utilized as a key employee and given significant assignments. . . . [His] supervisory position demonstrates an advanced level of knowledge in organizational processes and procedures. . . . [He] possess[es] knowledge that can only be gained by experience with [the beneficiary's foreign employer]. . . . His academic education and training taught him how to do the physical work but that is not what he is being brought to the U.S. to do. He is coming to the U.S. to provide an expertise gained only by years with [the beneficiary's foreign employer] combined with the ability to tell and direct aircraft technicians what [sic] to do.

Counsel contends that the director incorrectly implies that the petitioner seeks to place the beneficiary in a skilled worker position, rather than a specialized knowledge position. Counsel states that the director's decision "misreads the position by ignoring all [of] the evidence presented and takes matters totally out of context." Counsel further asserts that "it is also irrelevant whether there [sic] other repair facilities, that is not determinant of specialized knowledge."

Counsel resubmits letters from four clients of the beneficiary's foreign employer attesting to the particular services that the beneficiary's foreign employer provides. Counsel highlights sections of each letter, emphasizing that workers from the beneficiary's foreign employer travel to the United States to train local maintenance personnel, and to develop temporary repairs to clients' aircraft so that the aircraft can be ferried to repair facilities in Canada.

On review, counsel has not demonstrated that the beneficiary possesses "specialized knowledge" as defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).[1] As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52

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[1] Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect]

(Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

> A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

Id. at 53.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner*, *id.* at

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interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. 117, 119 (Comm. 1981). According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; see also, *1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend all employees with specialized knowledge, but rather to "key personnel" and "executives.")

In the instant matter, the petitioner has not submitted a sufficiently detailed description of the beneficiary's duties to show that they involve specialized knowledge as defined in 8 C.F.R. section 214.2(l)(1)(ii)(D). While the record suggests that the beneficiary is an experienced technician, the evidence does not show that his responsibilities require a greater level of knowledge of the products and processes of the petitioner and its foreign affiliate than that required of a skilled worker. Counsel asserts that the beneficiary "possess[es] knowledge that can only be gained by experience with [the beneficiary's foreign employer]," yet counsel has not articulated what that knowledge is. Counsel states that "[the beneficiary] has been utilized as a key employee and given significant assignments," yet the record does not describe any of these specific assignments or explain how the beneficiary has assumed a prominent role. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As evidence of the beneficiary's specialized knowledge, the petitioner submitted certificates showing that the beneficiary completed training while employed with the petitioner's affiliate in Canada. The petitioner submitted a list of 16 in-house sessions that occurred between April 23, 1996 and September 9, 2002, covering topics such as Respirator Fitting and Testing, Forklift Operator Safety, Receiving Inspector Training, and Fundamental Use of Bore Scope. The duration of these training sessions, when identified, ranged from two to 16 hours. While counsel references training that the beneficiary received, counsel does not explain how this training provided the beneficiary with a greater degree of knowledge of *the petitioner's* product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in *the petitioner's* processes or procedures. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). In the petitioner's February 13, 2003 response to the director's request for evidence, it identified the beneficiary's specialized knowledge in brush anodizing and cad plating

as important to his success as a repair engineer for the petitioner in the United States. Yet, as the sole evidence that the beneficiary has expertise in these areas, the petitioner submitted a training certificate, dated October 10, 2002, that reflects that the beneficiary completed a course titled *SIFCO Process Anodizing Solutions and Cadmium code 5070*, conducted by an organization called SIFCO Selective Plating (SIFCO). This evidence reflects that the beneficiary has completed training with an outside organization, ostensibly in the processes and products of that outside organization. While the beneficiary's experience with SIFCO's anodizing and cad plating processes may be a valuable skill for the petitioner, it does not constitute specialized knowledge of the petitioner's processes. Additionally, as SIFCO is a separate entity, it is assumed that its training is available to those not employed by the beneficiary's foreign employer. Thus, evidence fails to show that the beneficiary's knowledge of SIFCO's anodizing and cad plating processes is not generally known by practitioners in the field of aircraft repair. The fact that the beneficiary's foreign employer funded or otherwise provided training for the beneficiary does not, by itself, render the skills that the beneficiary gained to be specialized knowledge of the foreign employer's products or processes.

The petitioner has not provided information such that the AAO can compare the beneficiary's knowledge with that of other repair engineers or staff employed by the petitioner or the beneficiary's foreign employer. The record provides no account of the number of repair engineers or technical staff employed at either company, or the beneficiary's level of prominence among them. Thus, the AAO cannot determine whether the beneficiary qualifies as "key personnel" within the petitioner's family of companies. *See Matter of Penner*, 18 I&N Dec. at 53. While counsel states that the beneficiary has been employed "for several years and holds a supervisory position," the record does not provide how long the beneficiary has been a supervisor or a repair engineer, such that the AAO can assess the length of time he has been employed in the described capacity. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 190.

Counsel resubmits letters from four clients of the beneficiary's foreign employer attesting to the particular services that the beneficiary's foreign employer provides. None of these letters mention the duties or skills of the beneficiary, and none address the specific role of the repair engineer within the processes of the beneficiary's foreign employer. While these letters further explain the services offered by the beneficiary's foreign employer, they provide no indication as to the level of knowledge attained and utilized by the beneficiary. Thus, these letters do not support that the beneficiary is employed in a specialized knowledge capacity.

Counsel states that the director's decision "misreads the [beneficiary's] position by ignoring all [of] the evidence presented and takes matters totally out of context." The AAO rejects this assertion, as the director's decision makes specific reference to the submitted evidence, including a detailed and relevant analysis of the beneficiary's training certificates and the petitioner's response letter. Further, the director's request for evidence reflected that other issues were under consideration, such as whether the petitioner and the beneficiary's foreign employer possess a qualifying relationship. As the director did not deny the petition based on a lack of such relationship, the AAO concludes that he considered the evidence submitted by the petitioner in response to the request for evidence, and found that it passed muster on that issue. Counsel's assertion that the director ignored all of the evidence is unfounded.

Counsel inaccurately asserts that "it is . . . irrelevant whether there [sic] other repair facilities, that is not determinant of specialized knowledge." Again, the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. It is appropriate to assess whether the skill and knowledge possessed by a beneficiary is generally known by practitioners in the relevant field. *See 1756, Inc. v. Attorney General*, *supra* at 15. The director considered whether there are other repair facilities in the United States that service Bombardier aircraft, employing knowledge similar to that held by the beneficiary. The director ultimately concluded that there are likely many such facilities, undermining the assertion that the beneficiary's knowledge is specialized. The director's analysis is deemed proper and relevant.

Counsel refers to an INS Memorandum from Norton, Associate Commissioner, Examinations, dated October 27, 1988. Counsel identifies the memo as a "case," and fails to discuss the purpose for referencing the memorandum, or the bearing it has on the instant matter. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. at 190.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General*, *supra* at 16. The record does not establish that the beneficiary was employed abroad in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

In visa 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 director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.