U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. A3042,
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

D7

File: SRC 04 103 51791 Office: TEXAS SERVICE CENTER Date: NOV 01 2005

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

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 filed this nonimmigrant petition seeking to extend the employment of its president as an L-1A nonimmigrant intracompany transferee 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 limited liability company organized in the State of North Carolina that is engaged in repair and support services in the woodworking machine tool industry. The petitioner claims that it is the subsidiary of [redacted] located in Halifax, United Kingdom. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

Counsel for the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner claims the beneficiary is in fact engaged in managerial activities for the petitioner. Counsel further asserts that the director failed to take into account the U.S. company's independent contractors and to consider the "reasonable needs" of the company. In support of these assertions, the petitioner submits additional evidence.

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. 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 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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, 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 (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(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.

At issue in the present matter is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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.

In a letter dated February 23, 2004 submitted with the initial petition, the petitioner described the beneficiary's job duties as follows:

[The beneficiary]'s primary responsibilities are:

- To run, on a day-to-day basis, all business operations. This will comprise such work as is necessary to perform service and retrofits of equipment as required by our customers and to support them as necessary to ensure a long and fruitful relationship, thus promoting ongoing business. The company will recruit an engineer or engineer intern to train and provide technical services later this year.
- To oversee the financial basis of the company and maintain it in a profitable state.
- Develop and implement plans grow [sic] the company and at all times to maintain it as a leader in its field, respected and held in high esteem amongst customers and competitors alike.
- Oversee sales operations that are currently handled by Davis-Taylor-Forster Company (Machine Tools) on a project basis.
- To act in a sales capacity as and when necessary to secure profitable contracts.

In order to achieve the above goals, [the beneficiary] will perform the following duties and accept the following responsibilities:

Sales

- Analyze and decide whether terms of potential contracts meet the company's needs
- Implement strategies for obtaining new customers
- Visit potential customers and assess their requirements

- Generate quotations that outline the proposed work/services to be offered and cost
- Ensure efficient customer support

Company Organization

- Serve as final decision maker on company finances with the aid of an accountant
- Assess the cost effectiveness of services provided
- Efficiently manage the contracts acquired and match to resources available
- Assess and appoint potential subcontractors for work outside the company's current resources
- Responsible for hiring/firing
- Ensure invoices are sent and payments are received on time
- Make decisions on future investment and employment requirements

Contracts

- Deal with the purchasing of equipment required for a contract
- Process deliveries of parts required
- Ensure correct items ordered for specific contracts are supplied
- Trace progress and cost of each contract to ensure costs incurred are within budget
- Report the progress of the contract with the customer
- Complete work outlined in a contract
- Respond to repair/service calls by a customer, assess the fault and if possible correct the fault or advise on replacement parts or suggest a course of action.

On March 12, 2004, the director requested additional evidence. Specifically, the director requested (1) co of the petitioner's State Employer's Quarterly Tax Returns for 2003; (2) evidence of the current lease for United Sates entity; (3) evidence of the current staffing level in the United States, including position titles duties of all employees and the educational background of the professionals that are employed; and (description of the duties of the beneficiary for the past year, indicating the percent of time he/she has s performing each duty.

Responding to the director's request, the petitioner indicated in its letter dated April 4, 2004 that it has employees, the beneficiary and the beneficiary's wife, [redacted], who serves as a general administr and project engineer. The petitioner also stated in that letter that 75% of the company's sales is handled another company on a commission-based arrangement, although the petitioner did not submit any docum evidencing that arrangement. In addition, the petitioner stated that there was need for an additional engir or engineer intern and that in the long term, the company intends to hire a new employee every eight months to two years. The petitioner further described the beneficiary's duties as follows:

Office [M]anagement: 12% of [t]ime

- Analyze past projects/contracts to ensure current pricing strategy is used and to ensure future quotation pricing favors a profitable status.
- Analyze company accounts and make decisions on any major equipment purchases.
- Decide on new company operating procedures as required.

- Supervise subcontractors to satisfy customer expectations.
- Decide the hiring and firing of employees, payroll amounts and authority employee subcontractors [sic].
- Ensure the overall operations of the company are cost effective and efficient.

Sales Coordination: 21% of time

- Coordinate with the sales organization in Virginia to ensure correct representation and promotion of [the petitioner] and that competitive pricing is maintained.
- Visit to potential customers to better understand requirements and offer additional supervision of the sales staff of the Virginia sales organization.
- Create price quotes outlining the major products and the assignment of vendors to be used.
- Ensure that the finish[ed] price quotation document is correct and relates to the customer's requirements and within the projected cost.
- Make decisions on the payment terms of the quotations to optimize company cash flow.
- Negotiate with customers regarding pricing of new or submitted quotes.

Project Direction: 67% of time

- Coordinate with subcontractors regarding project schedule and additional requirement and recommendations.
- Ensure that the project is kept within budget, that work is done on time and within the terms agreed in the contract.
- Oversee any work that is to be done by the subcontractors or by the customer's personnel.
- Direct high-level stages of a project, regarding overall installation, software structuring and compilations that require [a] high degree of expertise and knowledge.
- Ensure that the projects are completed to the company's high quality standards and to customer satisfaction.

The petitioner submitted its State Employer's Quarterly Tax and Wage Reports for the last two quarters of 2003, which list [redacted] as the only employee who was paid wages during those two quarters. The petitioner did not submit any separate job description for [redacted], although the petitioner's business plan states that she would "handle the general administrative aspects, assist in sales and marketing, and work on office based tasks concerning contracts."

On April 26, 2004, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. Specifically, the director observed that with only one other employee, the beneficiary's primary assignment cannot be to supervise a subordinate staff of professional, managerial, or supervisory personnel. The director also noted that the regulations defining qualifying organizations specifically exclude the mere presence of an agent or office of the organization.

On appeal, counsel asserts that the director's denial fails to take into account the "reasonable needs" of the organization in light of its stage of development. Counsel also contends that the director did not consider the

"independent contractors/companies whom the beneficiary supervises in order to manage the sales function of the business." Counsel claims that there is no basis in fact for a determination that the petitioner has merely established an agent or office in the United States. Finally, counsel repeated the description and apportionment of the beneficiary's duties that were set forth in the petitioner's response to the request for further evidence, asserting that based on that description, the beneficiary is in fact primarily engaged in managerial activities for the petitioner.

At the outset, the AAO notes the director's determination that "with only one other employee, the beneficiary's primary assignment cannot be to supervise a subordinate staff of professional, managerial, or supervisory personnel." Section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily "supervises and controls the work of other supervisory, professional, or managerial employees," among other things. However, the use of the plural "employees" in that context appears to be a matter of grammatical accordance in referring to more than one type of employees rather than a requirement that more than one employee of any of the listed categories be supervised or controlled by the beneficiary. Therefore, as it is possible that a beneficiary with only one subordinate professional employee could qualify as a managerial employee under the Act, the director's statement in that respect must be withdrawn.

Notwithstanding the foregoing, however, counsel's assertions on appeal are not persuasive. The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The AAO notes that there are significant differences between the petitioner's description of the beneficiary's job duties provided with the initial petition and that given in response to the director's request for further evidence. The initial job description appears to indicate that the beneficiary is directly involved in much of the company's sales activities, having responsibility for tasks such as "analyzing [the] terms of potential contracts," "visiting potential customers and assess their requirements," "generating quotations that outline the proposed work/services to be offered and cost," and "ensuring efficient customer support." In response to the director's request for further evidence, however, the petitioner renamed the category of the beneficiary's sales-related duties as "sales coordination" and included tasks such as coordination and supervision of the staff of the organization to which the petitioner claims to have subcontracted the company's sales function. Similarly, the initial job description included a category entitled "Contracts," which enumerated tasks involving the direct servicing of the company's contracts, such as "deal with the purchasing of equipment required for a contract," "process deliveries of parts required," "ensure correct items ordered for specific contracts are supplied," "trace progress and cost of each contract to ensure costs incurred are within budget," "report the progress of the contract with the customer," "complete work outlined in a contract," and "respond to repair/service calls by a customer, assess the fault and if possible correct the fault or advise on replacement

parts or suggest a course of action." The job description submitted later, on the other hand, showed that the beneficiary spends 67% of his time on "project direction," including contract-related tasks such as "coordinat[ing] with subcontractors regarding project schedule," "ensur[ing] that the project is kept within budget, that work is done on time and within the terms agreed in the contract," "oversee[ing] any work that is to be done by the subcontractors or by the customer's personnel," "direct[ing] high-level stages of a project," and "ensur[ing] that the projects are completed to the company's high quality standards and to customer satisfaction." In short, while the initial description indicated that the beneficiary was involved in directly providing the company's services, the second iteration of the beneficiary's job duties has the beneficiary *managing* and *coordinating* the work done in the petitioner's operation.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new duties of a different nature to the job description. Therefore, the analysis of this criterion will be based on the job description for the beneficiary submitted with the initial petition.

As previously noted, the initial job description described the beneficiary as directly performing the company's sales activities and contract servicing, in effect performing tasks necessary to provide the company's service or product. While the petitioner did not provide any time breakdown for these tasks in the initial job description, these tasks appear to comprise the majority of the beneficiary's responsibilities in that job description. 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).

Moreover, the petitioner has not sufficiently demonstrated that there are other employees who would relieve the beneficiary of the non-qualifying day-to-day tasks of the company such that he could be considered to be *primarily* functioning in an executive or managerial capacity. The record does indicate that there is one other employee on the company's payroll. However, as noted earlier, the only description of her duties on record stated that she would "handle the general administrative aspects, assist in sales and marketing, and work on office based tasks concerning contracts. That characterization of her job is vague and fails to account for how she would adequately relieve the beneficiary of the numerous non-qualifying tasks set forth in his job description. In addition, the petitioner stated in its February 23, 2004 letter, and also in response to the director's request for further evidence, that it has subcontracted its sales function to [redacted] Company, a machine tool company based in Richmond, Virginia, which handles approximately three-quarters of the petitioner's sales. The petitioner submitted with the initial petition what it described as "representative copies" of commission and fees invoices from [redacted] dated February 2003 through December

2003. However, upon review, these invoices do not identify with any degree of specificity the services the subcontractor supposedly provided for or on behalf of the petitioner. Aside from these invoices, the petitioner has submitted no other evidence documenting its purported arrangement with [redacted] nor has the petitioner explained how the services of the subcontractor obviate the need for the beneficiary to primarily conduct the petitioner's business. Without sufficient documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

Although the beneficiary is not required to supervise personnel, since the petitioner claims that his duties involve supervising employees, the petitioner must establish that the beneficiary's subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. The petitioner has failed to do so in this case. In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employees. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, while the petitioner indicated that its only other employee, a "general administrator and project engineer," possesses an advanced degree, the petitioner has not established that an advanced degree is actually necessary for that employee's work. Nor has the petitioner shown that the employee in question supervises subordinate staff members or manages a clearly defined department or function of the petitioner, such that she could be classified as a manager or supervisor. Thus, the petitioner has not shown that the beneficiary supervises subordinate employees who are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for the Citizenship and Immigration Services (CIS) to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

In addition, the regulations provide strict evidentiary requirements for the extension of a "new office" petition, as is the case here, and require CIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The petitioner indicates that it plans to hire additional

employees in the future. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 248. Moreover, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. As discussed above, the petitioner in this matter has not demonstrated that it has reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

In light of the foregoing, the AAO concurs with the director's conclusion that the petitioner has not sufficiently established that the beneficiary would be employed in a primarily managerial or executive capacity in the U.S. entity, as required by 8 C.F.R. § 214.2(l)(3).

Beyond the decision of the director, the record contains insufficient evidence to establish that the overseas entity employed the beneficiary in a primarily managerial or executive capacity for the requisite period preceding the filing of the petition, pursuant to 8 C.F.R. § 214.2(l)(3)(iii). In the Form I-129 and its letter dated February 23, 2004, the petitioner indicated that the beneficiary has been employed by the foreign entity since 1985, first as an electrical panel builder, and then as a project director from 1993 until his deployment with the U.S. entity. The petitioner also submitted the beneficiary's *curriculum vitae*, in which the beneficiary stated that as project director in the foreign entity, he "oversaw all projects handled by the allocated engineers along side still handling [his] own projects. Attended weekly production meetings. Contributed to many decisions in the hire [sic] of personal and the running of [the foreign entity]. Attend[ed] yearly Board meetings regarding financial decisions and future investments." The petitioner provided no other description of the beneficiary's duties or his position within the foreign entity. Without a more detailed description of his duties and his subordinate staff, if any, the AAO cannot determine whether the beneficiary in fact was employed by the foreign entity in a primarily managerial or executive capacity for the requisite period preceding the filing of the petition, as required under the regulation at 8 C.F.R. § 214.2(l)(3)(iii). For this additional reason, the petition may not be approved.

In addition, although not addressed by the director, another issue to be examined is whether the petitioner has established that the beneficiary's services in the United States are for a temporary period. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In this matter, the record shows that the beneficiary has a 49% ownership interest in the U.S. entity. The record contains no evidence to support a conclusion that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of the position in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services in the United States are for a temporary period, as required by the regulations. For this additional reason, the petition may not be approved.

Moreover, the AAO notes that the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires that a petition for extension of L-1 status which involved the opening of a new office must be accompanied by, among other things, "[e]vidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year." The AAO also notes that this petition for extension was filed less than a week before the beneficiary's one-year period in L-1 status expired, yet on the Form I-290B, counsel stated that "[a]t the time of filing the extension, the petitioner has been active for less than 10 months." Thus, by counsel's own admission, the petitioner has failed to show that it was doing business for the previous year as required by the regulations. For this additional reason, the petition may not be approved.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.