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U.S. Citizenship and Immigration Services

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File: LIN 06 041 51312 Office: NEBRASKA SERVICE CENTER Date: MAR 06 2007

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)

IN BEHALF OF BENEFICIARY:

[redacted]

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, Chief
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 in the position of business systems analyst 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 software development company and claims a qualifying relationship with [redacted] of Japan. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary had been employed abroad in a specialized knowledge capacity for the requisite one-year period. 8 C.F.R. § 214.2(l)(3)(iii)-(iv).

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been employed abroad in a specialized knowledge capacity. Specifically, counsel asserts that the beneficiary has specialized knowledge of the petitioner's proprietary Customer Relationship Management (CRM) and Enterprise Resource Planning (ERP) processes and methodologies as these apply to the integration of CRM and ERP products with new systems features.

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) further 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.

At issue in this proceeding is whether the petitioner has established that the beneficiary had been employed abroad in a specialized knowledge capacity for the requisite one-year period. 8 C.F.R. § 214.2(l)(3)(iii)-(iv).

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

> 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 a 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 and procedures.

In a letter dated November 17, 2005 appended to the petition, the petitioner described the beneficiary's job duties and purported specialized knowledge as follows:

> In [her capacity as business systems analyst], [the beneficiary] will draw upon her specialized knowledge of [the petitioner's] corporate structure, goals, and policies to provide support for [the petitioner's] new business models from a business process and systems perspective. [The beneficiary] will employ her advanced knowledge of [the petitioner's] proprietary products and development methodology to analyze and develop requirement documentation for future [petitioner] development initiatives. [The beneficiary] will implement strategies developed by [the petitioner's] management to ensure that corporate objectives are achieved, carrying out numerous complex assignments requiring her in-depth knowledge of [the petitioner's] methodologies and processes for the support of the development of new and enhanced systems features.
>
> [The beneficiary] will draw upon her experience working with [the petitioner's] proprietary [CRM] and [ERP] processes and technologies to support the integration of [the petitioner's] CRM and ERP products with new systems features. [The beneficiary] will contribute to all parts of [the petitioner's] structured product development lifecycle and will provide knowledge transfer on individual products and customized [petitioner] solutions. [The beneficiary] will also employ her specialized knowledge of [the petitioner's] proprietary technology to integrate solutions that address current and future client requirements within the boundaries of the existing [petitioner] development framework. Furthermore, [the beneficiary] will employ her advanced knowledge of [the petitioner's] corporate protocols to

> develop business specifications for application development and enhancement efforts, and will also serve as a liaison between users and software developers.

The petitioner further explained that the beneficiary performed these duties abroad as a business systems analyst, and that she has been employed abroad in that capacity since September 2004 without interruption. The current petition was filed on November 23, 2005. According to the petition, prior to her employment with the petitioner's subsidiary, the beneficiary was employed by Accenture as a business systems analyst for approximately five years.

On November 30, 2005, the director requested additional evidence establishing that the beneficiary's knowledge is indeed specialized. The director requested, *inter alia*, evidence that the beneficiary possesses specialized knowledge of the petitioner's product, service, research, equipment, techniques, management, or other interests in its application in international markets, or an advanced level of knowledge or expertise in the organization's processes or procedures. The director also requested evidence distinguishing the beneficiary's knowledge from that possessed by others employed in similar positions within the petitioner's organization and in the industry at large.

In response, the petitioner provided a letter dated December 15, 2005. In that letter, the petitioner provided further details regarding the beneficiary's purported specialized knowledge abroad, asserting that:

> [The beneficiary's] experience at [the foreign subsidiary] has not been of a generic or common nature, but has involved significant and sustained exposure to, and training in, [the petitioner's] processes and methodologies for [CRM] and [ERP], as these relate to [the petitioner's] proprietary technological products. To perform in this position, a complete understanding of these products is required. [The beneficiary's] background is thus not common to the software industry, let alone the business software consulting industry.

The petitioner further asserts:

> Such technologies are extraordinarily sophisticated, and it is simply not possible, as described below, for a generic Business Systems Analyst from outside the [petitioner's] organization, however broad his or her experience in the field of enterprise software, to assume these duties immediately. It is also not practical to train such a generic software engineer to the requisite level of competence within a time frame that would be acceptable to our projects expedited schedules.

Furthermore, the petitioner attempts to distinguished the beneficiary's knowledge from other employees within its organization as follows:

> [The petitioner] selected [the beneficiary] for an intracompany transfer to serve as a Business Systems Analyst as a result of her unparalleled specialized knowledge of [the petitioner's] products, proprietary technology, project end-goals, and procedures for the Japanese marketplace. [The petitioner] currently does not possess another employee within its

> organization who possesses the skill-set and specialized knowledge of [the beneficiary]. In fact, no other individual within [the petitioner's organization] has specialized knowledge of the [petitioner's] processes and methodologies referred to above that is equivalent to that of [the beneficiary]. Recruiting or training another individual to be on par with [the beneficiary] would prove to be a time-consuming and expensive undertaking.

The petitioner also reemphasizes the proprietary nature of the beneficiary's purported specialized knowledge and asserts that such knowledge is only available to employees or those in close association with the petitioner. Finally, the petitioner asserts that the beneficiary developed her specialized knowledge after "extensive and rigorous training on the unique and proprietary nature of [the petitioner's] products." The petitioner, however, did not provide any details regarding this training program.

On December 30, 2005, the director denied the petition concluding that the petitioner failed to establish that the beneficiary had been employed abroad in a specialized knowledge capacity for the requisite one-year period.

On appeal, counsel argues that the petitioner has satisfied the criteria for establishing that the beneficiary has been employed abroad in a specialized knowledge capacity. Counsel argues that the director erred in determining that the beneficiary's two months of on-the-job training abroad did not impart the described specialized knowledge to the beneficiary, that the petitioner established that the position abroad required specialized knowledge, and that the director failed to follow the adjudication standards set forth in a Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994).

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary had been employed abroad in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) for the requisite one-year period.

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) and (iv). The petitioner must submit a detailed job description of the services performed sufficient to establish specialized knowledge. In this case, while the beneficiary's job description adequately describes her duties as a business systems analyst, the petitioner fails to establish that this position required an employee with specialized knowledge or, even if it did, that the beneficiary had been employed in a specialized knowledge capacity for the requisite one year abroad.

Although the petitioner repeatedly asserts that the beneficiary's position abroad required "specialized knowledge" and that the beneficiary had been employed abroad in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other business systems analysts employed by the foreign entity or in the industry at large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Specifics are clearly an important indication of whether a

beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

Counsel asserts that the beneficiary possesses specialized knowledge of the petitioner's corporate structure, goals, and policies as well as the petitioner's proprietary products and development methodology. Counsel refers specifically to her knowledge of proprietary CRM and ERP processes and technologies as applied to the integration of CRM and ERP products with new systems features. Finally, counsel argues that this knowledge is extremely sophisticated, that it was acquired through extensive and rigorous training, and that "no other individual within [the petitioner's organization] has specialized knowledge of the [petitioner's] processes and methodologies referred to above that is equivalent to that of [the beneficiary]." It is important to note that counsel does not assert that the beneficiary is the only employee in possession of the purported "specialized knowledge" or that she is the most knowledgeable of the petitioner's, or the foreign entity's, employees.

In support of its petition, the petitioner relies heavily on its position that the processes, methodologies, and products involved are unique and proprietary, and that the beneficiary's knowledge could only have been gained through experience and training with the foreign entity. However, despite this assertion, the record does not reveal the material difference between the skills and knowledge needed to work with the petitioner's proprietary processes, methodologies, and products, and similar processes, methodologies, and products in the software industry. While the petitioner asserts repeatedly that the beneficiary gained her knowledge of the software through extensive training and experience, the record does not establish that the beneficiary's knowledge is different from the knowledge possessed by business systems analysts generally throughout the industry or by other employees of the foreign entity. The fact that no other employee possesses "equivalent" knowledge does not establish that the beneficiary's knowledge is indeed uncommon. All employees can be said to possess "unique" and "unparalleled" skill sets to some degree; however, a unique skill set that can be imparted to another similarly experienced and educated employee without significant economic inconvenience is not "specialized knowledge." Moreover, the proprietary or unique qualities of the petitioner's processes, methodologies, or products do not establish that any knowledge of these is "specialized." Rather, the petitioner must establish that qualities of the unique or proprietary processes, methodologies, or products require employees to have knowledge beyond what is common in the industry.

Like any well-kept secret, it is likely that there are certain aspects to this, and all, proprietary processes, methodologies, and products which are known only by certain employees. However, this does not establish that this knowledge is "specialized" for purposes of this visa classification. The petitioner cannot manufacture specialized knowledge by refusing to share information with others. Rather, the petitioner must establish that the beneficiary's knowledge is specialized because she gained the knowledge through extensive training or experience which could not easily be transferred to another employee. In this matter, the petitioner has not established that the beneficiary's knowledge is materially different from that possessed by similar employees with experience with similar products or processes. The fact that other professionals may not have very specific, proprietary knowledge regarding the petitioner's processes, methodologies, or products is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information and knowledge to a newly hired employee after a short introductory training period.

Finally, as recognized by the director, it is simply not credible that the beneficiary, who was employed abroad for a total of 14 months, acquired truly "specialized knowledge" through two months of on-the-job training and thereafter worked in a "specialized knowledge" capacity for at least one year before the filing of the instant petition. First, while the petitioner asserts that the beneficiary was exposed to "extensive and rigorous training on the unique and proprietary nature of [the petitioner's] products," the petitioner provided no details regarding this training. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.[1] Second, while counsel correctly observes that a beneficiary need not be subjected to a specific type of training program for any specific length of time, the petitioner nevertheless must establish that the knowledge in question "would be difficult to impart to another individual without significant economic inconvenience" to the petitioner or the foreign employer. Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). In this matter, if the purported "specialized knowledge" could be imparted to an employee with a similar education and with similar work experience after approximately two months of on-the-job training, then the petitioner has not established that this knowledge is indeed specialized since it could be imparted to another individual without significant economic inconvenience. 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. Third, even assuming that the beneficiary does possess "specialized knowledge," the petitioner has not established that she acquired this knowledge in time for her to have been employed in a specialized knowledge capacity for at least one year. As explained above, the record is devoid of evidence regarding the beneficiary's training program abroad and does not reveal when, exactly, the beneficiary commenced working in a specialized knowledge capacity. Therefore, the petitioner has not established that the beneficiary was a key employee of crucial importance abroad and that she was employed in a specialized knowledge capacity for at least one year before the instant petition was filed.

The AAO does not dispute the likelihood that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. However, it is 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)). As stated by the Commissioner in *Matter of Penner*, 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." 18 I&N Dec. at 52. Rather,

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[1]Although counsel states on appeal that the petitioner "would have prepared a detailed response" if the director had made it clear in the Request for Evidence that he had concerns regarding the beneficiary's training record abroad, counsel nevertheless failed on appeal to provide any further evidence regarding the beneficiary's training. Even if it could be argued that the director's Request for Evidence did not clearly solicit further evidence regarding the beneficiary's training abroad, it is not clear what remedy would be appropriate beyond the appeal process itself. It would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence since the petitioner has had an opportunity to supplement the record on appeal and chose not to do so.

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 firm's 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 the employee and the remainder of the petitioner's workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

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. REP. 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 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* than an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized 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. at 119. 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. v. Attorney General,* 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to "key personnel" and "executives.")

A 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum written by the then Acting Associate Commissioner also directs CIS to compare the beneficiary's knowledge to the general United States labor market and the petitioner's workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). A comparison of the beneficiary's knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary's skills and knowledge and to ascertain whether the beneficiary's knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary's knowledge, CIS would not be able to "ensure that the knowledge possessed by the beneficiary is truly specialized." *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

As explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the foreign entity or by business systems analysts employed elsewhere. As the petitioner has failed to document any materially unique qualities to the beneficiary's knowledge, the petitioner's claims are not persuasive in establishing that the beneficiary, while perhaps highly skilled, would be a "key" employee. There is no indication that the beneficiary has any knowledge that exceeds that of any other business systems analysts or that she has received special training in the company's methodologies or processes which would separate her from any other software professional employed with the foreign entity or elsewhere. It is simply not reasonable to classify this relatively new employee who has undergone a short two-month introductory, on-the-job training period as a key employee of crucial importance to the organization.

The legislative history of 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.* Based on the evidence presented, it is concluded that the beneficiary was not employed abroad in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director and for the same reasons articulated above, the petitioner has not established that the beneficiary will be employed in a specialized knowledge capacity in the United States or that the beneficiary has specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). As explained previously, the petitioner has failed to establish that the beneficiary's knowledge of the petitioner's processes, methodologies, and products constitutes a specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other business systems analysts employed by the petitioner or in the industry at large. Also, the petitioner has not established that two-months of on-the-job training imparted specialized knowledge to the beneficiary.

Accordingly, the petitioner has not established that the beneficiary will be employed in the United States in a specialized knowledge capacity as required by 8 C.F.R. § 214.2(l)(3)(ii), or that she has specialized knowledge, and the petition may not be approved for these additional reasons.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.