U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: NOV 1 3 2014 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a software development and consulting company. It seeks to permanently employ the beneficiary in the United States as a software engineer and to classify him as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

At issue in this case is whether the beneficiary possesses an advanced degree as required by the requested preference classification and the terms of the labor certification.

PROCEDURAL HISTORY

The petitioner filed its Form I-140, Immigrant Petition for Alien Worker, on May 20, 2014. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on June 18, 2013, and certified by the DOL (labor certification) on February 14, 2014.

Part H of the labor certification sets forth the following minimum requirements for the job offered:

4.	Education: Minimum level required:	Master's degree
4-B.	Major Field of Study:	Computer Science, Engineering (any branch), or any related field
5.	Training:	None required
6.	Experience in the Job Offered	Required
6-A.	How long?	12 months
7.	Alternate Field of Study:	Not acceptable
8.	Alternate Combination of Education and Experience:	Not acceptable
9.	Foreign Educational Equivalent	Acceptable
10.	Experience in an Alternate Occupation	Acceptable
10-A.	How long?	12 months
10-B.	Job title(s) of alternate occupation(s)	Programmer Analyst, Business Analyst, Management Analyst, IT Analyst

Part J of the labor certification states that the beneficiary has a master's degree in the field of computer science from [redacted] California, completed in 2010.

As evidence of the beneficiary's educational credentials the petitioner submitted the following documentation with the Form I-140:

- Copies of a diploma, provisional certificate, and transcript from [redacted] India, showing that the beneficiary received a "Bachelor of Technology (Mechanical Engineering)" on December 14, 2007, following completion of a four-year, eight-semester degree program in the years 2003-2007.

- Copies of a diploma and transcript from [redacted] California, showing that the beneficiary received a "Master of Science in Computer Science" on June 24, 2010, following completion of a degree program that ran from September 29, 2008 to April 30, 2010.

On May 29, 2014, the Director issued a Request for Evidence (RFE), advising that [redacted] appeared to have "accreditation issues." The Director requested evidence that [redacted] was accredited during the period of the beneficiary's attendance, as well as a copy of the beneficiary's Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, for the years he attended [redacted] The petitioner responded with a brief from counsel and additional documentation that addressed the issues raised in the RFE.

On August 1, 2014, the Director denied the petition on the ground that the petitioner failed to establish that the beneficiary has a U.S. master's degree or a foreign equivalent degree. In particular, the Director found that the beneficiary's master's degree from [redacted] does not qualify as an advanced degree under applicable regulations because [redacted] is not an accredited institution.

The petitioner filed a timely appeal, along with a brief from counsel and supporting documentation. The petitioner contends that the beneficiary's degree from [redacted] qualifies as an advanced degree because there is no requirement in the regulations that the institution conferring the degree must be accredited.

We conduct appellate review on a *de novo* basis. *See Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

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[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

LAW AND ANALYSIS

The Roles of the DOL and USCIS in the Immigrant Visa Process

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
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> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> >
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

> There is no doubt that the authority to make preference classification decisions rests with INS.[2] The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[3] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did

[2] The INS (Immigration and Natualization Service) was succeeded by USCIS when the Homeland Security Act of 2002 entered into force on March 1, 2003.

[3] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

> not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference [visa category] status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

> The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).
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> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification, and whether the beneficiary qualifies for the offered position.

Eligibility for the Classification Sought

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The terms "advanced degree" and "profession" are defined in 8 C.F.R. § 204.5(k)(2). The regulatory language reads as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> *Profession* one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. [The occupations listed in section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."]

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
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> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, a petition for an advanced degree professional must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Furthermore, an "advanced degree" is either (1) a U.S. academic or professional degree or a foreign equivalent degree above a baccalaureate, or (2) a U.S. baccalaureate or a foreign equivalent degree followed by at least five years of progressive experience in the specialty.

As previously discussed, the beneficiary has a four-year "Bachelor of Technology (Mechanical Engineering)" from an Indian university, According to the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), a four-year bachelor of technology degree in India is comparable to a bachelor's degree in the United States. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign degree equivalencies.[4] Accordingly, we find that the beneficiary's bachelor of technology in mechanical engineering from India, is equivalent to a U.S. bachelor's degree in that field.

The labor certification in this case specifies, however, that a master's degree and one year of experience in the job offered or a related occupation are the minimum educational and experience requirements for the proffered position of software engineer. The labor certification specifies that an alternate combination of education and experience is not acceptable. Under the terms of the labor certification, therefore, the beneficiary's degree from – a foreign equivalent degree to a U.S. baccalaureate – could not be combined with five years of qualifying experience in the specialty to meet the requirements of an advanced degree as defined in 8 C.F.R. § 204.5(k)(2). Furthermore, there is no evidence in the record that the beneficiary had five years of qualifying experience in the specialty which could be combined with his bachelor's degree to comprise a master's degree equivalent under 8 C.F.R. § 204.5(k)(2), even if the labor certification allowed for such.

The beneficiary's other degree is the aforementioned "Master of Science in Computer Science" from California. That institution, however, has not been accredited by a

[4] USCIS utilizes EDGE as a primary resource for determining the U.S. equivalency of foreign degrees. AACRAO, according to its website, www.accrao.org, is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent approximately 2,600 institutions in over 40 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." *Id.* EDGE, as stated on its registration page, is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. "An Author's Guide to Creating AACRAO International Publications" 5-6 (First ed. 2005), available for download at www.aacrao.org/publications/guide_to_creating_international_publications.pdf. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12.

recognized accrediting agency. For the reasons set forth below, a degree from an unaccredited institution will not be considered an advanced degree under 8 C.F.R. § 204.5(k)(2).

In the United States institutions of higher education are not authorized or accredited by the federal government.[5] Instead, the authority to operate and issue degrees is granted at the state level. State approval to operate, however, is not the same as accreditation by a recognized accrediting agency.

Accrediting agencies are private educational associations that develop evaluation criteria reflecting the qualities of a sound educational program, and conduct evaluations to assess whether institutions meet those criteria.[6] Institutions that meet an accrediting agency's criteria are then "accredited" by that agency.[7]

The DOE and the Council for Higher Education Accreditation (CHEA), an association of 3,000 degree-granting colleges and universities, are the two entities responsible for the recognition of accrediting agencies in the United States.

While the DOE does not accredit institutions, it is required by law to publish a list of recognized accrediting agencies that are deemed reliable authorities as to the quality of education provided by the institutions they accredit.[8] The CHEA plays a similar oversight role. The presidents of American universities and colleges established CHEA in 1996 "to strengthen higher education through strengthened accreditation of higher education institutions." [9] Like the DOE, CHEA recognizes accrediting organizations. "Recognition by CHEA affirms that standards and processes of accrediting organizations are consistent with quality, improvement, and accountability expectations that CHEA has established." [10] According to CHEA, accrediting institutions of higher education "involves hundreds of self-evaluations and site visits each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort." [11]

According to the U.S. Department of Education (DOE), "[t]he goal of accreditation is to ensure that education provided by institutions of higher education meets acceptable levels of quality." [12] Accreditation ensures the nationwide recognition of a school's degrees by employers and other institutions, and also provides institutions and their students with access to federal funding.

The DOE and CHEA recognize the [redacted] Accrediting Commision for Senior Colleges and Universities as the accrediting association with

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[5] *See* http://ope.ed.gov/accreditation.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] www.chea.org/pdf/Recognition_Policy-June_28_2010-FINAL.pdf.
[10] *Id.*
[11] *Id.*
[12] http://www2.ed.gov/print/admins/finaid/accred/accreditation.html.

jurisdiction over California, where is located.[13] website lists all accredited institutions within its jurisdiction, and is not named as one of the accredited institutions. *See* http:/ (accessed October 29, 2014). Thus, has not been accredited by a recognized accrediting agency.

On appeal the petitioner has submitted evidence that has authorized to operate and approved two specific degree programs – including the "Master of Science in Computer Science" earned by the beneficiary. The fact remains, however, that is an unaccredited institution. The State of California acknowledges that "accreditation is an indication of the quality of education offered," and that institutions "must be accredited by an agency recognized by the [DOE] in order for it or its students to receive federal funds." http:// California's Education Code states that approval to operate in California is granted after the has verified that the institution "has the capacity to satisfy the minimum operating standards." Cal. Ed. Code section 94887.

Accreditation provides assurance of a basic level of quality of the education provided by an institution as well as the nationwide acceptance of its degrees. A degree from a state approved institution that is unaccredited does not provide a sufficient assurance of quality or the nationwide acceptance of its degrees. Since the beneficiary's "Master of Science in Computer Science" from is not from an accredited institution of higher education, we find that it does not qualify as an advanced degree within the meaning of 8 C.F.R. § 204.5(k)(2).

In the appeal brief counsel points to language differences between the regulations governing employment-based petitions for "outstanding professors and researchers" and those for "aliens . . . holding advanced degrees or aliens of exceptional ability" as evidence that a degree need not come from an accredited institution. Specifically, while the regulation at 8 C.F.R. § 204.5(i)(2) defines "academic field" for outstanding professors and researchers as "a body of specialized knowledge offered for study at an **accredited** United States university or institution of higher education" (emphasis added), the regulation at 8 C.F.R. § 204.5(k)(2) does not state that a U.S. baccalaureate, master's degree, or doctorate (or foreign equivalent degree) must come from an accredited university or institution of higher education to meet the definition of an "advanced degree," and the regulation at 8 C.F.R. § 204.5(k)(3) does not state that the academic record of an alien's U.S. or foreign equivalent degree must be from an accredited institution to meet the evidentiary requirements of an advanced degree. According to counsel, "[i]f Congress required that the advanced degree must have been from an accredited United States university it would have specifically mandated or stated in the section definitions and initial evidence required for Section 204.5(k)."

Counsel's reference to Congress in the above sentence of the appeal brief is incorrect since Congress did not promulgate the cited regulations. Congress passed the statutory provisions at issue, section 203(b)(1) and (2) of the Act, which do not specifically address the subject of accreditation. It was the legacy INS, however, which drafted and adopted the implementing regulations.

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[13] *See*

We do not interpret the regulations as evidencing an intent by the legacy INS to require the academic credentials for outstanding professors and researchers to be earned at accredited institutions, while allowing the academic credentials of advanced degree professionals and aliens of exceptional ability to be earned at unaccredited institutions. Though 8 C.F.R. § 204.5(i)(2) requires outstanding professors and researchers to have specialized knowledge in an academic field that is offered at an accredited U.S. university, the same academic field (though presumably of lesser quality) could also be offered at an unaccredited U.S. university. The regulation does not specifically state that an outstanding professor or researcher must have gained his or her specialized academic knowledge at an accredited institution, as opposed to an unaccredited institution, though we would certainly interpret the regulation that way. It is in that same vein that we interpret the regulation for advanced degree professionals as requiring the degree to come from an accredited institution. Accordingly, we are not persuaded by counsel's contention that the language differences in the regulations cited by counsel preclude our determination that a degree must come from an accredited institution of higher education to qualify as an advanced degree within the meaning of 8 C.F.R. § 204.5(k)(2).

For all of the reasons discussed above, we conclude that the petitioner has failed to establish the beneficiary's eligiblilty for classification as an advanced degree professional under section 203(b)(2) of the Act based on his "Master of Science in Computer Science" from in , California. Accordingly, the petition cannot be approved.

Qualifications for the Job Offered

To be eligible for approval under the immigrant visa petition, the beneficiary must have all the education, training, and experience specified on the underlying labor certification as of the petition's priority date, which is the date the labor certification application was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).[14] In this case, the priority date is June 18, 2013.

The key to determining the job qualifications is found in Part H of the ETA Form 9089, which describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)

[14] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad.

(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Regarding the minimum level of education, training, and experience required for the proffered position of software engineer, the ETA Form 9089 states the following:

- The minimum educational requirement is a master's degree in computer science, any branch of engineering, engineering, or any related field, or a "foreign educational equivalent" (Part H, lines 4, 4-B, 7, 7-A, and 9).

- There is no minimum training requirement (Part H, line 5).

- The minimum experience requirement is 12 months in the job offered or in an alternate occupation such as programmer analyst, business analyst, management analyst, or IT analyst.

The beneficiary does not meet the above educational requirement. As previously discussed, the beneficiary's degree from the [redacted] California, though called a Master of Science in Computer Science, does not qualify as a U.S. master's degree under the "advanced degree" definition of 8 C.F.R. § 204.5(k)(2) because it was not awarded by an educational institution that has been accredited by a regional accrediting agency recognized by the DOE and CHEA. Nor does the beneficiary have a foreign educational equivalent to a U.S. master's degree. Since he does not fulfill the educational requirement in Part H of the labor certification, the beneficiary does not qualify for the job offered. For this reason as well, the petition cannot be approved.

CONCLUSION

Based on the foregoing analysis, we find that the petition is deniable on the following grounds:

- The beneficiary is not eligible for classification as an advanced degree professional under section 203(b)(2) of the Act because he does not have a U.S. master's degree in computer science, engineering, or a related field, or a foreign equivalent degree.

- The beneficiary does does not qualify for the proffered position under the terms of the labor certification, which require a U.S. master's degree in computer science, engineering, or a related field, or a foreign educational equivalent.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. Accordingly, the appeal will be dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

ORDER: The appeal is dismissed