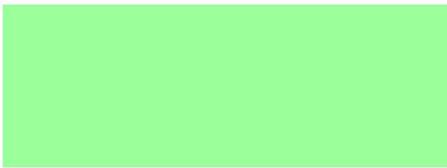
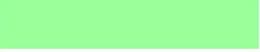


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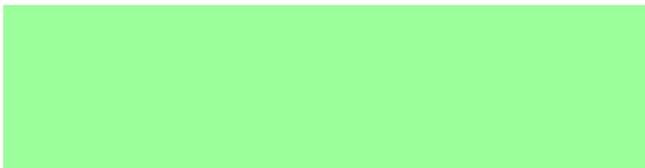


DATE: **DEC 30 2014** OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
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:



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

The petitioner filed the Form I-129 (Petition for a Nonimmigrant Worker (Form I-129)), seeking to employ the beneficiary as an L-1B 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 states that it is a New York corporation established in [REDACTED] and that it engages in the design, manufacturing, and sales of amber jewelry. The petitioner claims to be a subsidiary of Sole Proprietorship [REDACTED] located in Russia. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as president, for a period of three years.¹

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, or that the beneficiary's position in the United States will involve specialized knowledge. 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, prior counsel for the petitioner submits a brief and asserts that the beneficiary possesses specialized knowledge and that the proposed position in the United States requires specialized knowledge. Prior counsel for the petitioner also asserts that the petitioner should not be considered as a new office and submits evidence demonstrating that the petitioner had been doing business in the United States for two years prior to the date of filing. The petitioner's new counsel submits a supplemental brief and asserts that the beneficiary possesses specialized knowledge and that the beneficiary will work for the petitioner in a specialized and advanced knowledge capacity. The petitioner's new counsel further asserts that the beneficiary qualifies for L-1A status in the alternative.

I. THE LAW

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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

¹ Although the petitioner is requesting that the beneficiary be granted L-1B classification for a period of three years, the director observed that the petitioning U.S. company is a new office due to lack of evidence in the record showing that the petitioner had been doing business for one year as of the date of filing. On appeal, the petitioner contends that it is not a new office; however, the AAO agrees with the director's determination as the petitioner failed to submit sufficient evidence demonstrating that it had been doing business in the United States for one year as of the date of filing the instant petition.

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

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.

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)(3)(vi) further provides that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and
- (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and whether the beneficiary will be employed in the United States in a position that involves specialized knowledge.

1. Facts

On the Form I-129, the petitioner indicated that it currently has zero employees in the United States and a gross annual income of \$62,057. The petitioner stated that the beneficiary will be working as president. On the Form I-129 Supplement L, where asked to describe the beneficiary's proposed duties in the United States, the petitioner stated:

President of the company. Management of all technical and artistic aspects of the production of amber jewelry.

In its letter of support, dated May 22, 2013, the petitioner described the beneficiary's experience and specialized knowledge as follows:

[The beneficiary] holds a Bachelor Degree in Mining and Mineral Production from the [REDACTED]. For ten years, from 1992 to 2002, he was a Chief Engineer at the only in the world [REDACTED]. As such, he is one of a few world's experts on origins, production, and quality of various sorts of Amber.

* * *

In addition to his unique expertise in Amber, [the beneficiary] has a hands-on knowledge of the newest jeweler's equipment, including 3D-modeling and prototyping machines. This knowledge is greatly reinforced by his engineering background.

In its letter of support, the petitioner briefly explained that the beneficiary's expertise lies with Amber and the selection of "a proper process and form for each particular item" as no two pieces of Amber are the same.

The petitioner also submitted a letter from the foreign entity, dated November 20, 2012, describing the beneficiary's proposed position in the United States as follows:

I sent [the beneficiary] to the USA to be the president of the company in order to fulfill the following goals:

1. Register the firm on the territory of the USA.
2. Rent an office and production spaces.
3. Select and purchase engineering equipment and office supplies.
4. Purchase of furniture for the office and production spaces.

5. Equip the work space (setup 110V and 220V electricity; connect hot and cold water; setup drainage system with filtering and capture of precious metals; install forced ventilation system with conditioning and a system of gas suction from the heating oven, install video surveillance system).
6. Mount and install the equipment. Launch work and adjust operating practices.
7. Organize workplaces.
8. Advertisement; setup an internet page displaying offered products and service.
9. Select and accept employees. If necessary, train employees to the specificity of the production.
10. Launch product manufacturing.
11. Direct company in the future in accordance to job duties, and draft reporting documents in accordance to current U.S. laws.

The petitioner submitted a copy of the beneficiary's diploma indicating that he completed a full course of study at the [REDACTED] in the specialty of Open Cast Mining and awarded the qualification of Mining Engineer on June 15, 1992.

The director issued an RFE and instructed the petitioner to submit, in part, evidence that the beneficiary possesses specialized knowledge, and that the proposed position in the United States will require specialized knowledge.

In response to the RFE, the petitioner submitted three character reference letters for the beneficiary, which claim to explain the beneficiary's actual specialized knowledge in the amber processing and manufacturing field.

The petitioner submitted a letter, dated October 23, 2013, from the [REDACTED] explaining the amber extraction and manufacturing process and describing the beneficiary's knowledge as follows:

[The beneficiary] was employed at [REDACTED] from 07.07.1992 to 01.09.1998.

* * *

A special school of training technicians, specialists, artists, stone carvers, and appraisers of amber was established at the Factory. [The beneficiary] completed a system of education of the qualified processor and appraiser of amber. He completed 310 hours of the course including practical training during 3,5 years.

[The beneficiary] was actively engaged in the transfer of the processing line at [REDACTED] deposit of amber from mechanical to hydro-mechanical system in 1992-1993. He created a new way of transporting of amber from the deposit location to the factory. . . but this is not being utilized because of the high cost of extraction.

Perfect knowledge of the subject, expert knowledge of the amber extraction and ways of its processing lead him to the position of a leading engineer of the geological department.

Together with technical work, [the beneficiary] participated in the development of the design of jewelry products based on amber varieties, colors, and types.

* * *

Education and professional skills of [the beneficiary] that include knowledge in the fields of organic and non-organic chemistry, make him a unique specialist in the field of processing of amber.

[The beneficiary] is also a unique technical specialist. . . . he participated in the development of a cyclone type of dust catcher to clean the air during hand processing. . . . Based on his ideas, a ventilation system of the stone-carving division of the [redacted] was changed

. . . [The beneficiary] introduced a classification system that took into account such characteristics as number of layers, number of fault-lines, uniqueness of color. . . . Since 1996, based on work of [the beneficiary], a new system of amber classification was adopted. This system is being in use today.

During his work at the [redacted] [the beneficiary] showed himself as a competent specialist, actively participated in many research and development projects that took place at the Factory. He is a unique specialist who possess [*sic*] specific knowledge in the field of amber extraction, its processing. He possess [*sic*] also an artistic taste and knowledge, and skills in jewelry production.

The petitioner submitted a letter, dated October 21, 2013, from the [redacted] stating that the beneficiary "has unique expertise in the field of amber processing." The letter explained that the [redacted] opened a school where high school students and graduates can obtain practical skills and theoretical knowledge in amber handling and assembly. The letter states that the beneficiary has extensive knowledge and skills in amber processing and is involved in teaching students about the origins of amber and the history of the amber industry.

The petitioner submitted a letter, dated October 21, 2013, from the [redacted] stating that the beneficiary has shown himself as "an expert with unique skills, fully conversant with modern equipment and having a vast store of knowledge and practical skills in amber handling and jewelry manufacture [*sic*]." The letter explained that the beneficiary's role in the creation of "a new way of transporting of amber from the deposit location to the factory," referenced in the [redacted] letter above, was as a design engineer for the mining technology. The letter also explained that the beneficiary actively participated in creating amber recycling equipment, made improvements to the CNC machines for creation of finished products from the pressed amber, and was one of the leaders of a product that produced amber tile and amber varnish from waste products.

The director denied the petition on March 14, 2014, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he will be employed in the United States in a position

requiring specialized knowledge. In denying the petition, the director found that the three letters submitted in response to the RFE are simply character reference letters that provide a breakdown of the beneficiary's employment history and make reference to the beneficiary being a "unique technical specialist" with no supporting evidence as to the beneficiary's actual specialized knowledge. The director observed that, while the beneficiary's Mining Engineer degree is helpful, it, along with the character reference letters, do not establish that he possesses specialized knowledge. The director also found that the list of job duties for the beneficiary's proposed position in the United States do not indicate the need for specialized knowledge. The director further found that it does not appear that the beneficiary has gained a great deal of additional expertise while in the petitioner's employ that would qualify him as a "specialized knowledge" worker within the organization. The director further observed that the petitioner failed to clearly document how the beneficiary's knowledge of the processes and procedures of the organization are substantially different from, or advanced in relation to, any individual similarly employed.

On appeal, the petitioner asserts that the beneficiary possesses specialized knowledge and will be employed in the U.S. in a position involving specialized knowledge. The petitioner states that the beneficiary qualifies for each prong of the definition in that he has noteworthy knowledge of the company's specific products which is not held by others in similar positions in the industry and has knowledge needed for the position based on his background and experience in the foreign entity's business processes and operating procedures. The petitioner contends that the director failed to consider the duties described in the petitioner's supplemental document, titled Structure of [REDACTED] defining the duties of the president of the U.S. company, which affected the overall analysis and led to the unwarranted conclusion not in favor of the petitioner. The petitioner further contends that the beneficiary's proposed position contains some duties which directly require the specialized knowledge of the beneficiary.

The petitioner contends that, as an alternative, given the nature of the beneficiary's proposed position in the United States, the beneficiary should also be considered for the L-1A classification as an employee in a managerial capacity. The petitioner asserts that the change in classification is not supported by a change in the beneficiary's position, as that remains unchanged. The petitioner contends that the nature of the beneficiary's position is that of a managerial capacity with specialized knowledge, not for performance of non-managerial duties, but to facilitate the control and management of reporting staff, with all duties remaining the same as were initially described.

The petitioner submits a letter, dated June 11, 2014, describing the amber processing and the beneficiary's role in the company's processes. The petitioner claims that the beneficiary: (1) invented a unique composition and technology for the polishing of amber, (2) invented a special exhaust facility for decreasing and removing dust from work spaces, (3) elaborated the technology of existing casting machines to increase quality and decrease the time of waxing, and (4) made changes in all the standard equipment and applied it for the processing of amber. The petitioner further states that "it is essential that the position of the President is held by the person bearing the proper experience in the field" and states that the beneficiary's duties in the U.S. will also include:

- control over making unique artistic articles made of amber of especially complicated compositions in folk traditions and exhibition samples;
- supervising gem-cutting, polishing and glossing of unique highly artistic articles made of amber of complicated shapes on the attended machine and manually;

- monitoring, engraving, flexure, twisting, blacksmitting [sic], fullering, founding of unique metal elements of the articles; complicated chemical manufacturing of metal elements for making them look expressive;
- overseeing mounting and assembling of unique artistic articles with application of fixing, breaking-down, rolling and other unique bonding techniques.

His work will involve the following knowledge:

- knowledge of the types of amber manufacturing, color metals and composite metals;
- techniques and order of operations while manufacturing amber and metals;
- shapes and types of amber engraving;
- principal directions of art development of manufacturing-unique articles made of amber.

2. Analysis

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge and will be employed in the United States in a position requiring specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts or prongs. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." See also 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence, which establishes whether or not the beneficiary actually possesses specialized knowledge. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner's claims are based on both prongs of the statutory definition. Specifically, the petitioner states the beneficiary has expert knowledge of its internal processes and the skills to manufacture and design of Baltic amber jewelry.

In examining the beneficiary's specialized knowledge and whether the offered position requires specialized knowledge, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.*

The petitioner indicates that only a person bearing the experience in manufacturing and sales of jewelry products made from Baltic Amber possesses the specialized knowledge required to perform the duties of the proposed position. Therefore, one of the critical questions before the AAO is whether the petitioner has supported its claim that the beneficiary's experience in manufacture and design and knowledge of the petitioner's processes constitutes specialized knowledge.

The petitioner in this matter has not provided sufficient probative evidence establishing the nature of the claimed specialized knowledge. The crux of the petitioner's claim is that the beneficiary served as the chief engineer of the [REDACTED] which the petitioner claims to be the only one in the world, for 10 years, which provided his specialized knowledge. The petitioner also considers that the beneficiary invented a unique composition and technology for the polishing of amber, invented a special exhaust facility for decreasing and removing dust from work spaces, elaborated the technology of existing casting machines to increase quality and decrease the time of waxing, and made changes in all the standard equipment and applied it for the processing of amber, which has all resulted in his specialized and advanced knowledge. However, the petitioner has not provided probative evidence establishing that the beneficiary's knowledge and enhancements to processes and equipment are significantly different than others in the same industry. Every amber and Baltic amber jewelry manufacturer and designer seeks to enhance its processes for better efficiency. Although the petitioner has described nuances the beneficiary has developed to provide a better manufacturing process, the petitioner has not established how this knowledge is different from what is generally possessed in the industry. Moreover, the petitioner has not established how this knowledge, even if proprietary, is "special" or "advanced." Accordingly, the record does not include the requisite supporting evidence establishing that the "nature" of the beneficiary's knowledge is specialized knowledge.

Additionally, the record does not include the information needed to make a comparison between the beneficiary's training and experience and that possessed by others at the foreign entity or within the industry as a whole. Although the petitioner states that the beneficiary possesses this specialized knowledge, it does not provide information on other employees within the foreign entity that possess similar knowledge, nor does it detail the type or amount of training that would allow others at the foreign entity to advance to the position. Therefore, while the record establishes that the beneficiary possesses the knowledge and skills required to manufacture and design of Baltic amber jewelry, the petitioner does not establish that this knowledge is significantly different from that possessed by others within the company working on the same processes or others who work with similar processes designed for the related industry. Accordingly, the petitioner has not established that the beneficiary possesses specialized or advanced knowledge.

Although the petitioner asserts that the beneficiary's position in the United States requires specialized knowledge, the petitioner has not sufficiently articulated or documented its claims. Other than submitting a brief list of proposed job duties for the beneficiary's position in the United States, the petitioner has not identified any aspect of the beneficiary's position which involves knowledge that rises to a level that is special or advanced. On appeal, the petitioner provides four additional duties, listed above, that the beneficiary will perform in the proposed position and contends that specialized knowledge is required in order to perform those duties as they are directly related to the manufacture and design of Baltic amber jewelry. However, these new job duties are not at all related to the job duties initially provided and appear to have been added in order to establish that the position requires some knowledge of the manufacturing and design process of Baltic amber jewelry. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Overall, the evidence does not reflect how the knowledge and experience required for the beneficiary's position would differentiate that position from similar positions at other employers within the industry. Again, the petitioner's claim that the knowledge is proprietary must be accompanied by evidence establishing that the beneficiary possesses knowledge that is different from what is generally possessed in the industry; any claimed proprietary knowledge must still be "special" or "advanced." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998). 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).

Finally, the petitioner's request to amend the petition on appeal is not properly before the AAO. The regulations at 8 C.F.R. § 214.2(l) state, in part:

(7) Approval of petition –

- (i) General. The director shall notify the petitioner of the approval of an individual or a blanket petition within 30 days after the date a completed petition has been filed. If additional information is required from the petitioner, the 30 day processing period shall begin again upon receipt of the information. The original Form I-797 received from the USCIS with respect to an approved individual or blanket petition may be duplicated by the petitioner for the beneficiary's use as described in paragraph (l)(13) of this section.

* * *

- (C) Amendments. The petitioner must file an amended petition, with fee, at the USCIS office where the original petition was filed to reflect changes in approved relationships, additional qualifying

organizations under a blanket petition, change in capacity of employment (*i.e.*, from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

The regulations are clear in that an amended petition may be submitted to update the Service of a change after a petitioner has already been approved, not in order to make the beneficiary eligible pursuant to a new classification regardless of the job duties or position description remaining the same. In this instance, the petitioner may file a new petition in behalf of the beneficiary seeking L-1A classification. Therefore, the request to reconsider the original petition on appeal as a petition for L-1A managerial capacity classification is rejected.

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge and will be employed in the United States in a position requiring specialized knowledge. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

III. CONCLUSION

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

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

ORDER: The appeal is dismissed.