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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



B9

DATE: **APR 27 2011** OFFICE: VERMONT SERVICE CENTER FILE:  EAC 07 217 50187

IN RE: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

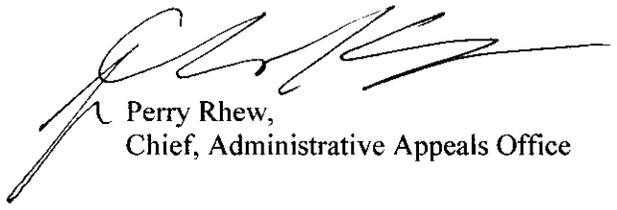


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion to reconsider will be granted. Upon reconsideration and review of the record, the appeal will remain dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that he resided with his wife; (2) that his wife subjected him to battery or extreme cruelty during their marriage; and (3) that he married his wife in good faith.

Counsel filed a timely appeal, which we summarily dismissed on August 6, 2010 without addressing the merits of the case. On motion to reopen and reconsider, counsel submits an argument made on the Form I-290B, Notice of Appeal or Motion. Counsel's submission does not meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). The submission does however qualify as a motion to reconsider under the requirements set forth at 8 C.F.R. § 103.5(a)(3).

#### *Applicable Law*

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, an individual who has divorced an abusive U.S. citizen remains eligible to self-petition under these provisions if he or she "demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. . . ."

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immediate relative or as a preference immigrant if he or she:

\* \* \*

- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship [to the U.S. citizen or lawful permanent resident spouse].

\* \* \*

- (v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.
- (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.
- (vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of

the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

\* \* \*

- (ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*Evidence for a spousal self-petition –*

- (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .
- (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies,

affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

\* \* \*

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information

about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Jamaica, married B-O-,<sup>1</sup> a citizen of the United States, on August 23, 2004. He filed the instant Form I-360 on July 17, 2007.<sup>2</sup> The director issued two subsequent requests for additional evidence to which the petitioner, through counsel, filed timely responses. After considering the evidence of record, including the petitioner's responses to the requests for additional evidence, the director denied the petition on December 14, 2009, and we summarily dismissed the petitioner's timely appeal on August 6, 2010.

Counsel filed the instant motion on September 8, 2010. The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon reconsideration and review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition. Beyond the decision of the director, we find that the petitioner has also failed to demonstrate that he is a person of good moral character as well as the existence of a qualifying relationship with a citizen of the United States and his corresponding eligibility for immediate relative classification.

*Joint Residence*

The record contains conflicting information regarding the petitioner's alleged joint residence with B-O-. In response to the director's May 6, 2009 request for additional evidence, the petitioner stated that he resided with B-O- from June 2004 until February 2005, and that the last address at which they lived together was located at ██████████. However, in response to the director's January 25, 2006 request for additional evidence issued in connection with his previous Form I-360, the petitioner stated that he and B-O- began residing together on May 24, 2003. On the Form G-325A, Biographic Information, that he signed on August 24, 2004, the petitioner stated that he moved to Fort Lauderdale, Florida from New York in June 2004. In his August 22, 2007 statement, the petitioner stated that he and B-O- began living together after their August 23, 2004 wedding. In his May 20, 2006 affidavit submitted to BellSouth in support of his identity theft complaint, the petitioner stated that he moved to New York from Florida in December 2004, thus implying that the alleged joint residence ceased at that time. The petitioner's testimonial evidence regarding the alleged joint residence, therefore, is not consistent and is of limited probative value. On motion, counsel states that the petitioner submitted "a statement detailing his unusual living arrangement with his unusual living situation." However, it did not resolve his inconsistent statements to U.S. Citizenship and Immigration Services (USCIS).

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<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> This is the second Form I-360 filed by the petitioner. The first, EAC 06 049 52547, was filed on November 30, 2005 and denied on October 5, 2006.

Nor does the testimonial evidence of the petitioner's acquaintances establish that he and B-O- shared a joint residence. Although counsel cites the testimony of [REDACTED] and [REDACTED], we note that none of these individuals stated that the petitioner and B-O- lived together or discussed the alleged shared residence.

Nor does the documentary evidence of record establish the alleged joint residence of the couple. Although counsel cites to letters from [REDACTED] a social worker who interviewed the petitioner on February 16, 2006 and [REDACTED] a psychologist who interviewed the petitioner on September 24, 2009, both letters were based upon the statements of the petitioner, whose testimony regarding the alleged joint residence is inconsistent and of little probative value. The documents and audit from the Florida Power and Light Company (FPL) are not evidence of a shared residence because: (1) they do not name B-O-; and (2) they are dated April and June 2006, more than one year after the cessation of the alleged joint residence.

The relevant evidence fails to demonstrate that the petitioner resided with B-O-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

As evidence that he was subjected to battery or extreme cruelty perpetrated by B-O- during their marriage, the petitioner submitted his own testimony, testimony from acquaintances, and two evaluations of his mental health.

In the undated statement he submitted with his first Form I-360 filing, the petitioner stated that he noticed B-O- had an anger management problem about five months after they married, and that she became verbally and physically abusive, especially after consuming alcohol. He also stated that B-O- threatened his immigration status; cursed at him and was disrespectful; and that living with her was torturous.

In the undated declaration he submitted in response to the director's January 25, 2006 request for additional evidence issued in connection with the first Form I-360, the petitioner stated that B-O- began acting differently after they married. He stated that B-O- spent the money he gave her on cigarettes and alcohol; went to parties and clubs excessively; took money from his wallet; cursed at him; yelled at his children and his friends when they called him; threatened his immigration status; turned off his stereo; changed the channel while he watched television; and, finally, threw his clothing out of the house.

In his August 22, 2007 letter, the petitioner stated that B-O- drank excessively and was verbally abusive; destroyed all paperwork related to his immigration processing; threatened his immigration status; was possessive and controlling; did not cook for him or take care of the home if he did not give her money; took money from his wallet; threatened him with divorce constantly; listened to his telephone conversations; and threw his clothing onto the street.

In her undated letter, ██████████ stated that she personally witnessed B-O- verbally abusing the petitioner on many occasions, and later saw her throwing his clothing out of the house. ██████████ stated in her September 14, 2005 letter that B-O- was aggressive, abusive, and disrespectful, and that the petitioner sought shelter in her home on many occasions.

The petitioner also submitted a letter from ██████████ a social worker who interviewed the petitioner on February 16, 2006. According to ██████████ the petitioner told her that B-O- subjected him to verbal and emotional abuse. She stated that the petitioner told her that B-O- abused alcohol; left the home for days at a time; refused to allow him to comfort her when she was upset; screamed at him; was controlling; and threw his belongings outside the home. ██████████ also stated that the petitioner told her he suspected infidelity on the part of B-O- and that B-O- withheld important paperwork related to his immigration processing.

The record also contains a letter from ██████████ a psychologist who interviewed the petitioner on September 24, 2009. According to ██████████ the petitioner told him that B-O- abused him verbally, emotionally, and physically. ██████████ stated that the petitioner told him that B-O- called him names; slapped him; pushed him; criticized his sexual performance; abused drugs and alcohol; and forced him to leave their home. ██████████ stated that in his professional opinion, the petitioner developed an adjustment disorder with mixed anxiety and depressed mood as well as “depressive symptomatology” as a result of the abuse to which he was subjected by B-O-.

Finally, the petitioner submitted copies of documents he states are evidence that B-O- committed identity theft against him.

Considered in the aggregate, the relevant evidence fails to establish that B-O- subjected the petitioner to battery or extreme cruelty during their marriage. In the undated statement he submitted with his first Form I-360 filing in 2005, the petitioner stated that he was battered by B-O-, and he made the same claim to ██████████ in 2009. However, he made no allegations of physical abuse by B-O- in his other two statements. To the contrary, in his statement submitted in response to the director’s April 25, 2006 request for additional evidence regarding the first Form I-360, the petitioner stated that he feared that B-O- would “take it to [the] next level and become physical[ly] abusive,” thus implying that she had not been physically abusive. Nor did ██████████ discuss any allegations of physical abuse made by the petitioner during their interview. The timeframe during which the alleged abuse occurred, when the petitioner did make that allegation, was also inconsistent: in his initial statement, the petitioner stated that he did not notice B-O-’s anger management problem until they had been married five months. However, he later stated that she threatened him with divorce and deportation throughout the time during which they were together. These inconsistencies in the petitioner’s description of the alleged abuse undermine the probative value of his testimony. Nor do the letters from ██████████ and ██████████ establish that the petitioner was subjected to battery or extreme cruelty, as their descriptions of the alleged abuse are generalized and lacking in probative detail. Nor did ██████████ sign her letter, which detracts further from its probative value. Nor does the letter from ██████████ establish that the petitioner was subjected to abuse perpetrated by B-O- during their marriage, as the letter specifically states that a determination that the petitioner had been abused could not be made.

For all of these reasons, the testimonial evidence of record fails to demonstrate that the petitioner was subjected to battery or extreme cruelty perpetrated by B-O- during the couple's marriage.

Nor does the documentary evidence of record establish that the petitioner was subjected to battery or extreme cruelty. Although the record contains evidence that a telephone account was opened in his name in 2005, we note that the petitioner made no mention of his identity being stolen during the pendency of the first Form I-360, and he did not mention the incident to either [REDACTED] or [REDACTED]. As noted by the director in his decision denying the petition, the record contains a letter from [REDACTED] relieving him of any financial responsibility for the account and informing him that his credit rating would not be affected adversely, and the petitioner did not adequately explain how he knows it was B-O- that opened the account. Nor did he explain in probative detail how the incident affected him. The petitioner has failed to establish that this incident constituted extreme cruelty.

The relevant evidence in this case fails to demonstrate that, during their marriage, B-O- subjected the petitioner to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Faith Entry into Marriage*

In finding that the petitioner failed to establish that he had married B-O- in good faith, the director noted that the petitioner's statements were vague and lacked detail regarding the couple's relationship. On appeal and on motion, the petitioner did not supplement the record with additional details to satisfy this requirement.

In the undated letter he submitted when he filed the first Form I-360, the petitioner stated that he met B-O- two years before their 2004 wedding and provided no further details. In his August 22, 2007 declaration, the petitioner stated that he met B-O- in Miami, Florida in April 2002. He stated that although he returned to Jamaica, he and B-O- stayed in touch and resumed their relationship when he returned to the United States on May 24, 2003. The petitioner stated that although he had planned to return to Jamaica, he decided to remain in the United States because he was in love with B-O-. He stated that he was attracted to B-O-'s jolly personality as well as to her physical appearance.

[REDACTED] stated that the petitioner told her that he met B-O- in 2002 as she was leaving a religious function and felt an instant chemistry with her. [REDACTED] stated that the petitioner recounted that he and B-O- spoke frequently and laughed often. [REDACTED] stated that the petitioner told him during their interview that he met B-O- in Florida and that she was warm, affectionate, and very kind during their courtship.

[REDACTED] stated in her undated, unsigned letter that when she observed the petitioner and B-O- together, they seemed to be in love. In her September 14, 2005 letter, [REDACTED] stated that the couple's marriage seemed to be working.

The relevant testimonial evidence fails to establish that the petitioner married B-O- in good faith. The testimony of the petitioner and his affiants lacks detailed, probative information regarding the couple's relationship that would provide insight into his intentions upon entering into the marriage, and provides little information regarding their shared experiences, apart from the alleged abuse. For example, the petitioner and his affiants fail to describe in probative detail the couple's first introductions, their first impressions of one another, their decision to date, their courtship, their decision to marry, their engagement, or their wedding ceremony. Nor does the documentary evidence of record, which consists of copies of photographs of the couple together on a single occasion, establish that the petitioner married B-O- in good faith, as these photographs establish only that the petitioner and B-O- were together on a single occasion.

The petitioner has failed to establish that he entered into marriage with B-O- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Good Moral Character*

Beyond the decision of the director, the petitioner has also failed to establish that he is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in July 2004 and ending in July 2007).

The record contains a state-issued criminal background check issued by the City of New York on March 1, 2006. However, there is no such evidence covering the petitioner's residence in Florida and, according to the petitioner, he lived in Florida with B-O- until February 2005. Moreover, the criminal background check issued by the City of New York does not cover the period of time elapsing from March 2, 2006 until the filing of the instant petition on July 17, 2007. For this additional reason, the petition may not be approved.

#### *Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

Beyond the decision of the director, the record further fails to establish the petitioner's eligibility for immediate relative classification based upon a qualifying relationship with a citizen of the United States. Although the petitioner stated on the Form I-360 that he and B-O- were married, and refers to B-O- as his wife in his testimony, Dr. Reich stated in his letter that during his interview with the petitioner, the petitioner told him that the couple's "formal divorce occurred approximately two years" after B-O- asked the petitioner to leave their home, which according to the petitioner's statement on the Form I-360 and in his letters occurred in February 2005. As the instant petition was filed on July 17, 2007, Dr. Reich's letter indicates that the petitioner was not married to B-O- at the time it was filed.

The language of the statute states that in order to remain eligible for classification despite no longer being married to a United States citizen, an alien must make two demonstrations: (1) that he or she

was the bona fide spouse of a United States citizen “within the past two years”; and (2) that there was a connection between the abuse and the legal termination of the marriage. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. §§ 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). Because this petition was filed after the date Dr. Reich indicated the marriage was legally terminated, and the petitioner has failed to establish that he was subjected to battery or extreme cruelty perpetrated by B-O- during their marriage, he has not demonstrated the existence of a qualifying relationship with a citizen of the United States and his corresponding eligibility for immediate relative classification.

*Conclusion*

Upon reconsideration, the petitioner has failed to overcome the director’s grounds for denying the petition. The petitioner has failed to establish that he resided with B-O-; that B-O- subjected him to battery or extreme cruelty during their marriage; and that he married B-O- in good faith. Beyond the decision of the director, the petitioner has also failed to demonstrate that he is a person of good moral character; that he had a qualifying relationship with B-O- at the time this petition was filed; and that he is eligible for immediate relative classification based upon a qualifying relationship with a citizen of the United States. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal remains dismissed. The petition remains denied.