



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF L-A-F-C-

DATE: JUNE 28, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner, a church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a pastor. *See* Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4). This classification allows non-profit religious organizations, or their affiliates, to employ foreign nationals as ministers, in religious vocations, or in other religious occupations, in the United States.

The Director, California Service Center, denied the petition. She concluded the Petitioner did not establish that it was a bona fide non-profit religious organization, that the Beneficiary had the requisite two years of qualifying work experience, or that the Petitioner had the ability to compensate the Beneficiary as claimed.

The matter is now before us on appeal. The Petitioner contends it meets the requirements for eligibility and submits additional evidence on appeal.

Upon *de novo* review, we will dismiss the appeal.

#### I. RELEVANT LAW AND REGULATIONS

Non-profit religious organizations may petition for foreign nationals to immigrate to the United States to perform full-time, compensated religious work as ministers, in religious vocations, or in other religious occupations. The petitioning organizations must establish that the foreign national beneficiary meets certain eligibility criteria, including membership in a religious denomination and continuous religious work experience for at least the two-year period before the petition filing date. Foreign nationals may self-petition for this classification. *See generally* section 203(b)(4) of the Act (providing classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)).

The regulation at 8 C.F.R. § 204.5(m) states that in order to be eligible for classification as a special immigrant religious worker, the Beneficiary must:

- (1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.
- (2) Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:
  - (i) Solely in the vocation of a minister of that religious denomination;
  - (ii) A religious vocation either in a professional or nonprofessional capacity; or
  - (iii) A religious occupation either in a professional or nonprofessional capacity.
- (3) Be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States.
- (4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. . . .

U.S. Citizenship and Immigration Services (USCIS) no longer requires that the qualifying religious work experience for the two-year period, described in 8 C.F.R. § 204.5(m)(4) and (11), be in lawful immigration status preceding the submission of a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, if the experience was acquired in the United States.<sup>1</sup>

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part, the following definitions:

*Bona fide non-profit religious organization in the United States* means a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS [Internal Revenue Service] confirming such

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<sup>1</sup> On April 7, 2015, the Court of Appeals for the Third Circuit held that the lawful immigration status requirement in 8 C.F.R. § 204.5(m)(4) and (11) is *ultra vires* and impermissibly conflicts with section 245(k) of the Act with respect to adjustment of status. See *Shalom Pentecostal Church v. U.S. Dep't of Homeland Sec.*, 783 F.3d 156, 165-67 (3d Cir. 2015). In accordance with this decision, USCIS implemented a policy to apply the *Shalom Pentecostal Church* decision nationally, pending the issuance of amended regulations that will remove the lawful status requirements in 8 C.F.R. 204.5(m)(4) and (11). See USCIS Policy Memorandum PM-602-0119 *Qualifying U.S. Work Experience for Special Immigrant Religious Workers 2* (July 5, 2015), [http://www.uscis.gov/sites/default/files/IRS/Laws/Memoranda/2015/2015-0705\\_Lawful\\_Status\\_PM\\_Effective.pdf](http://www.uscis.gov/sites/default/files/IRS/Laws/Memoranda/2015/2015-0705_Lawful_Status_PM_Effective.pdf) (USCIS Policy Memorandum PM-602-0119).

exemption.

*Bona fide organization which is affiliated with the religious denomination* means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.

....

*Tax-exempt organization* means an organization that has received a determination letter from the IRS establishing that it, or a group it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code of 1986 or subsequent amendments or equivalent sections of prior enactments of the Internal Revenue Code.

The regulation at 8 C.F.R. § 204.5(m)(7) states, in pertinent part, that the prospective employer must specifically attest to the following:

- (vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;

....

- (xi) That . . . any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and
- (xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

The regulation at 8 C.F.R. §204.5(m)(8) states:

*Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group

tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:
  - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
  - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
  - (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
  - (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The regulation at 8 C.F.R. § 204.5(m)(10) states:

*Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 [Wage and Tax Statement] or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

*Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States

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immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS. . . .

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

On the Form I-360, the Petitioner indicated that it is a member of the [REDACTED]. It stated that it would employ the Beneficiary, as a pastor at its location in [REDACTED] California, and compensate him \$1,500 per month. In support of the petition, the Petitioner submitted, among other things: a copy of its articles of incorporation; a letter from the IRS to the [REDACTED], dated May 31, 1967; a letter from the [REDACTED], dated May 6, 1999, stating that the Petitioner is included in its group tax-exemption; a letter from the [REDACTED] and a directory of its churches; a letter from [REDACTED] a senior pastor, stating that the Beneficiary has been a pastor at the petitioning organization since 2004; copies of photographs; church brochures; and financial documents, including bank account statements, a budget, earning statements, and tax forms.

The Director issued a request for evidence (RFE). Noting that the documentation regarding tax-exemption were from 1967 and 1999, the Director requested evidence that the [REDACTED] continues to be tax-exempt and that the Petitioner remains covered under its group ruling. She also sought, in part, additional documentation of the proposed compensation and the Beneficiary's work history. The Petitioner responded to the RFE with evidence including, but not limited to: a letter from the [REDACTED] to the IRS requesting group tax-exemption and a letter from the IRS granting the request; a letter from [REDACTED] conference minister for the [REDACTED] and additional financial documents, including tax return transcripts, profit and loss statements, a letter from a bank, and copies of checks.

The Director denied the petition. Beginning with the [REDACTED] she found that the 1967 IRS tax-determination letter and the 1999 letter from the [REDACTED] were outdated. In addition, she concluded that the documents submitted in response to the RFE pertained to a different group, [REDACTED]. She stated that although the evidence showed that the [REDACTED]

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\_\_\_\_\_ was a subordinate of \_\_\_\_\_, the Petitioner was not listed on the IRS determination letter and there was no evidence from \_\_\_\_\_ including the Petitioner under its group ruling. Furthermore, the Director found that the Petitioner did not establish the Beneficiary had worked full time as its pastor as claimed. She discussed inconsistencies in the record, stated that there was no verifiable evidence the Petitioner compensated the Beneficiary at all in 2012, and noted that none of the submitted fliers or church bulletins in the record referenced or showed the Beneficiary as a pastor. The Director determined that bank statements in the record did not show sufficient funds to cover the Beneficiary's salary and that there were unexplained inconsistencies regarding the Petitioner's finances. Finally, the Director indicated that the Petitioner filed for bankruptcy in March of 2014, prior to filing the petition, and that its location in \_\_\_\_\_ California, had been foreclosed upon.

On appeal, the Petitioner contends it is covered under the \_\_\_\_\_ group tax exemption. It also states that it has employed the Beneficiary as a pastor since September of 2004 and that its "record keeping and administration have been handled somewhat haphazardly." It argues that it has sufficient funds to compensate the Beneficiary \$1,500 per month and that there was "a single extraordinary circumstance" that led to the sale of its building. According to the Petitioner, since the building has been sold, it is "not saddled with that additional debt and therefore, has even further financial resources available to pay the proposed salary." The Petitioner submits new evidence on appeal including, in part, a commercial lease agreement of its new location and internet printouts.

After reviewing all of the evidence in the record, we will dismiss the appeal.

### III. ANALYSIS

#### A. Bona Fide Non-Profit Organization

The record includes two letters from the IRS granting a group tax exemption under section 501(c)(3) of the Internal Revenue Code: one letter is addressed to the \_\_\_\_\_ and another letter is addressed to the \_\_\_\_\_. The Petitioner has not established that these two entities are the same organization or that it is covered under either group ruling.

##### 1. The \_\_\_\_\_

The Petitioner initially claimed it was covered under the \_\_\_\_\_ group ruling. It submitted a letter from the IRS, dated May 31, 1967, confirming the \_\_\_\_\_ group tax exemption under section 501(c)(3) of the Internal Revenue Code. The Petitioner also submitted a letter, dated May 6, 1999, from the \_\_\_\_\_ stating that the Petitioner is covered under this group tax exemption.

We agree with the Director that this documentation is insufficient to establish that the Petitioner was covered under \_\_\_\_\_ group tax exemption when the petition was filed on April 9, 2014. The letters the Petitioner submitted were from 1967 and 1999. We concur that the evidence is outdated and does not show that the Petitioner remains tax exempt under \_\_\_\_\_ group exemption.

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2. [REDACTED]

Rather than current evidence of its coverage under [REDACTED] group exemption, in response to the RFE, the Petitioner submitted a copy of the [REDACTED] application for group tax exemption. In a March 2012 letter to the IRS, the [REDACTED] set forth in detail its request for a group tax exemption. It specified that it received tax exemption under section 501(c)(3) of the Internal Revenue Code in November 2007, retroactive to August 23, 2001. It stated it had previously submitted a request for group exemption in January of 2009, which it voluntarily withdrew. The letter stated that the [REDACTED] “is hereby applying for recognition as a central organization and is requesting a group exemption . . . on behalf of its subordinates . . . as described in this letter.” It next described “four inter-related communities of faith: Congregations, Area Conferences, Country Church Bodies, and International Fellowships” and specified that “[t]he subordinate organizations which are to be included in the current list of subordinates . . . is made up of Area Conferences.” It further explained that it sought to include only 11 of its 21 area conferences as subordinates, “subject to expansion by later inclusions.” It stated that “[t]he 21 area [REDACTED] conferences (11 of whom are applying herein as subordinates) serve as regional offices for the approximately 939 congregations affiliated with the [REDACTED].”

The IRS granted the [REDACTED] request for group tax exemption in September of 2013 and issued it a group exemption number of [REDACTED]. The IRS letter specified that it “recognize[d] the] subordinates whose names appear on the list you [REDACTED] . . . submitted.”

Therefore, by its own terms, the [REDACTED] group tax exemption covers only the 11 area conferences listed on its application letter. There is insufficient evidence to show that the Petitioner, or any of the 939 congregations affiliated with [REDACTED] is covered under the group ruling.

The Petitioner states on appeal that “[i]t is public knowledge that the General Conference was a predecessor organization (1960 – 2002) to the [REDACTED].” Not only has the Petitioner not provided any evidence of this contention, but also the evidence indicates that they are two separate entities. According to [REDACTED] application for group tax exemption, it was granted tax exemption in November 2007, retroactive to August 23, 2001. There is no indication it was ever a part of [REDACTED], which just two years earlier, in May 1999, wrote a letter confirming that the Petitioner was covered under its group ruling. Similarly, [REDACTED] application letter specifies that it had applied for a group ruling in January 2009, which it subsequently withdrew. There is no explanation as to why it would apply for a group ruling if it was [REDACTED] which had already been granted a group tax exemption by the IRS in 1967. In addition, the two entities have different federal identification numbers and were given different group exemption numbers by the IRS.

Even assuming that [REDACTED] was a “predecessor” to the [REDACTED] as the Petitioner claims, as explained above, the petitioning organization, a congregation, has not sufficiently shown it is covered by the [REDACTED] group tax exemption which specifically covers only

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11 area conferences. The Petitioner has not established by a preponderance of the evidence that it is a bona fide non-profit religious organization under 8 § 204.5(m)(5) or that it has satisfied the evidentiary requirements of 8 C.F.R. § 204.5(m)(8)(i).

#### B. Two-Year Religious Work Experience

Because the petition was filed on April 9, 2014, the Petitioner must establish that the Beneficiary has two years of qualifying work experience from April 9, 2012, until April 9, 2014. See section 203(b)(4)(iii) of the Act; 8 C.F.R. § 204.5(m)(4). As explained below, we find that the Petitioner has not submitted sufficient documentation to establish this requirement.

A declaration from the Petitioner's senior pastor, [REDACTED] submitted on appeal states that the Beneficiary has been a full-time, compensated pastor at the petitioning organization since September of 2004. She asserts that the Beneficiary has been compensated on a full-time basis and that any discrepancies regarding his salary are due to the fact that volunteers have changed over the years and "have done things in different ways at different times." She contends the church paid him \$14,534 in 2012 and \$18,218 in 2013. In addition, [REDACTED] states that the Beneficiary does not appear in the church's bulletins or brochures because they do not contain every detail with respect to the church.

The record includes copies of the Beneficiary's tax return transcripts from the IRS for 2012 and 2013 showing his income as \$14,534 and \$14,810, respectively. The record also includes copies of the Petitioner's profit and loss statements for 2012 and 2013 which shows total salaries paid as \$14,720 and \$14,810, respectively. Although these documents suggest that the Petitioner compensated the Beneficiary approximately \$14,000 in 2012 and 2013, the record contains unexplained inconsistencies that have not been sufficiently addressed.

First, on the Form I-360, the Petitioner indicated that there was one employee who would work at the same location where the Beneficiary will be employed. According to the Petitioner's profit and loss statement for June 2013, the Beneficiary was paid \$1,650 and [REDACTED] was paid \$2,350 for a total monthly expense of \$4,000. However, as noted above, the profit and loss statements for 2012 and 2013 show total salaries paid was only \$14,720 and \$14,810, respectively, an amount too low to account for the salaries of both the Beneficiary and [REDACTED]. We further note that the Beneficiary's tax return transcripts do not indicate who paid him.

Second, the record includes copies of the Petitioner's [REDACTED] bank account statements for April, May, and June 2013. The record also includes copies of earnings statements reflecting payments from the Petitioner to the Beneficiary. However, the Petitioner's bank account statements do not show that checks were paid in amounts that correspond to the statements. For instance, the statement for the period June 1 to June 30, 2013, indicates that the Petitioner paid the Beneficiary \$1,509. It lists two year-to-date salaries: \$9,061.42 and \$90,061.42. However, the Petitioner's bank account statement for the same time period in June of 2013 does not show that any checks, withdrawals, or other debits were made in the amount of \$1,509. In addition, earning statements for September, October, November, and December of 2013 show the Petitioner paid the Beneficiary approximately \$1,500 and list the same

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year-to-date salaries: \$9,061.42 and \$90,061.42. However, none of the Petitioner's bank account statements show any checks or withdrawals for approximately \$1,500.

The record also includes copies of checks written to the Beneficiary from the Petitioner's [REDACTED] bank account. The Petitioner has not submitted any [REDACTED] bank account statements. Without additional documentation from the Petitioner, there is insufficient documentation to corroborate the contention that the Petitioner compensated the Beneficiary for full-time employment from April of 2012 until April of 2014.

Aside from a letter from conference minister, [REDACTED] stating that the Beneficiary "maintains a full schedule of ministerial activities," there is no other relevant evidence in the record. For instance, there are no pamphlets, newsletters, or brochures in the record identifying the Beneficiary as a pastor at the church. There is no staff directory or organizational chart listing the Beneficiary as an employee. Although we acknowledge [REDACTED] contention that church bulletins do not contain every single fact about the church, at the same time, she asserts that the Beneficiary has been employed full time as a pastor for over ten years. The Act places the burden of proving eligibility for entry or admission to the United States on the Petitioner. See Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Considering the record in its entirety, we find that the Petitioner has not established that the Beneficiary was compensated for full-time religious work during the two years immediately preceding the filing of the petition. Therefore, the Petitioner has not established by a preponderance of the evidence that the Beneficiary has performed qualifying religious work continuously for at least the two-year period prior to the filing of the petition, as required by section 203(b)(4)(iii) of the Act and 8 C.F.R. § 204.5(m)(4).

### C. Compensation

On the Form I-360, the petitioning organization stated it would compensate the Beneficiary \$1,500 per month. However, as the Director noted, the Petitioner filed for bankruptcy in March of 2014, a month before it filed the instant petition, and the location listed on the petition indicating where the Beneficiary would work has since been foreclosed upon. [REDACTED] declaration on appeal describes the foreclosure and bankruptcy proceeding as follows:

Our Church had been for years faithfully making payments for the church building . . . to [the creditor] [REDACTED]. What happened was that the Church acquired another property in the [REDACTED] that we intended to use specifically for an expanded homeless ministry . . . . The [REDACTED] property was financed by the same [REDACTED]. However, after the purchase, the [REDACTED] refused to permit us to use the building for that purpose . . . . Since the building could not be utilized for its intended purpose, [REDACTED] sold the property for less than the purchase price and then added the shortfall to our mortgage . . . . [W]e filed the bankruptcy to force [REDACTED] to deal in good faith with us . . . to get [REDACTED] to reorganize the way they had tacked the shortfall onto our primary mortgage. They were our only real creditor in fact.

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Unfortunately, [REDACTED] insisted that the only way the Church would be permitted to *potentially* reorganize the debt was to first pay a 'loan reinstatement fee' of \$88,209 – for [REDACTED] attorneys' fees and foreclosure costs. This simply was not feasible for the Church . . . . At the end of the day, because the one and only real creditor, [REDACTED] refused to accept any reorganization, the bankruptcy matter was dismissed. A copy of that filing is attached hereto<sup>2</sup>. . . .

Articles from [REDACTED] confirm [REDACTED] account of the foreclosure:

[REDACTED] said the congregation took out the initial loan for a church building. They would sometimes fall behind on payments, but it was manageable. In 2005 the church used the second loan to purchase a building they intended to use as a homeless shelter. But the city would not grant permission for a shelter, so the church sold the building, but for less than they paid for it. With debt remaining on the second building in addition to the first, [REDACTED] said, the payments were too much to handle.

[REDACTED]

[REDACTED] Both articles indicated the Petitioner owed [REDACTED] \$632,226 and also referenced an open letter signed by five pastors of the petitioning church.<sup>3</sup> [REDACTED]

[REDACTED]

Despite submitting the petition one month after filing for bankruptcy, the Petitioner did not submit any evidence of its loans from [REDACTED]. The profit and loss statements in the record make no mention of [REDACTED] or any mortgage payments. According to the 2012 and 2013 statements, the Petitioner paid \$1,100 and \$1,200, respectively, for utilities, but there is no line item for a mortgage payment. Similarly, the June 2013 profit and loss statement includes expenses for utilities, building maintenance, property taxes, and building insurance, but does not include any expenses related to mortgage.

Although the Petitioner submits a commercial lease agreement on appeal, indicating that the church agreed to pay \$3,000 per month for five years, from November 10, 2014, until November 10, 2019, the record does not contain sufficient, complete, verifiable evidence that its income and assets, if any, exceed its expenses and liabilities such that it can afford to pay the Beneficiary \$1,500 per month. The Petitioner has not submitted past evidence of compensation for similar positions or a verifiable budget based on reasonable expectations showing monies set aside for salaries, leases, etc., as required by 8

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<sup>2</sup> Although [REDACTED] states that a copy of the bankruptcy filing is attached, the record does not contain documentation of the Petitioner's bankruptcy or foreclosure proceedings.

<sup>3</sup> Notably, the Beneficiary was not a signatory of the letter.

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C.F.R. § 204.5(m)(10). Considering the record in its totality, the Petitioner has not met its burden of meeting the regulatory requirements relating to compensation.

#### IV. CONCLUSION

The Petitioner has not established that it is a bona fide non-profit religious organization, the Beneficiary has the requisite two years of qualifying work experience, or its ability and intent to compensate him as claimed.

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.

Cite as *Matter of L-A-F-C-*, ID# 12908 (AAO June 28, 2016)