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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**

b2



Date: **JUN 01 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 nonimmigrant visa petition was denied by the service center director, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner claims to be a nutritional supplement manufacturer and to seek to employ the beneficiary as a software engineer. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that: (1) the proffered position was not a specialty occupation; and (2) a reasonable and credible offer of employment did not exist for the beneficiary. On appeal, the petitioner submits Form I-290B and a brief statement.

The first issue before the AAO is whether the proffered position is a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its

particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for additional evidence (RFE); (3) the petitioner’s response to the director’s RFE; (4) the director’s decision denying the petition; and (5) the petitioner’s Form I-290B and supporting document. The AAO reviewed the record in its entirety before issuing its decision.

In a letter dated March 19, 2009, counsel for the petitioner provided minimal information about the petitioner, and claimed that the petitioner required the beneficiary's services as a software engineer to maintain, expand, and further develop the petitioner's Russian language applications software and websites. Specifically, counsel explained that these websites were for the sales and distribution of the petitioner's products in Russia, and further claimed that the beneficiary will analyze the petitioner's Russian users' needs and design new applications to fit the operational needs of that particular market. The record also included copies of the petitioner's website, which indicated that the petitioner was founded in 1920 and specialized in mineral formulas.¹ The record also contained pages written entirely in Russian which were not accompanied by a certified foreign language translation as required by 8 C.F.R. § 103.2(b)(3).

Counsel further indicated that the proffered position was professional in nature and required the incumbent to hold at least a bachelor's degree, indicating that degrees in engineering, computer science, mathematics, physics, or related fields would satisfy the petitioner's degree requirement. Counsel further indicated that the beneficiary was qualified for the position based on his foreign equivalent degree of a U.S. bachelor's degree in computer and software engineering, and stated that the beneficiary would be paid an annual salary of \$40,000.

On June 18, 2009, the director issued an RFE, which requested a more detailed description of the work to be performed by the beneficiary as well as information pertaining to the petitioner's business. The director requested information pertaining to the beneficiary's specific job duties and the percentage of time devoted to such duties, as well as an organizational chart demonstrating the composition of the petitioner's company. The director also requested evidence such as documentation showing that similar businesses in the petitioner's industry imposed the same requirements for marketing analysts.

Counsel for the petitioner submitted a letter dated July 13, 2009 in response to the director's queries. Counsel submitted an excerpt from the U.S. Department of Labor's (DOL) *O*Net Online* website, claiming that its designation of software engineers in Job Zone Four clearly indicated the proffered position was a specialty occupation. Counsel addressed each of the director's queries, and also submitted copies of two job postings, a copy of the petitioner's organizational chart, various articles discussing the petitioner's business model, in general, and a statement from the petitioner discussing the proffered position.

The petitioner's undated statement submitted with the response to the RFE provided the following overview of the proffered position:

¹ According to the Utah Division of Corporations and Commercial Code, [REDACTED] was registered in 1985, not 1920. In addition, its listed doing-business-as (DBA) names include [REDACTED] [REDACTED] while being a DBA name, is not listed as a DBA of [REDACTED]

[The beneficiary's] job will be to Maintain, expand, and further develop our Russian language applications, software and websites. These websites are for sales and distribution of [the petitioner's] products in Russia, which is a rapidly expanding market for the business. He will analyze our Russian users' needs, designing new applications to fit the operational needs of this market[.]

These are some of the programs and computer languages he will use in their Russian Language counterparts:

CSS (Cascading Style Sheets)

HTML/XHTML

OsCommerce

MySQL Database Programming and Administration

PHP Programming Language

We are constructing an interactive web based sales presence employing a complex structure of associates. This is an entirely new concept that will require a software engineer capable of building the structure around these concepts entirely in the Russian Language for its future deployment in Russia.

The project will resemble our current English Language version at [REDACTED] [REDACTED] This English Language site is under construction by our in house software engineer.

He will spend 90% of his time on this project and the other 10% learning about our products and manufacturing processes.

We currently have translated material in the Russian language on the web but have not found, until now, someone who could actually build a complex e-commerce website entirely in the Russian Language.

On August 17, 2010, the director denied the petition. Specifically, the director concluded that, contrary to the claims of counsel and the petitioner, the proffered position was more akin to that of a webmaster or web administrator, and the record did not establish that the proffered position met any of the four supplemental criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also found that the record failed to demonstrate that a reasonable and credible offer of employment existed based on the family connections between the petitioner's president and the beneficiary, as well as with regard

to unexplained contradictory statements set forth during a telephone interview between USCIS and the petitioner's president on June 2, 2010.

On appeal, the petitioner addresses the director's concerns with regard to the statements set forth in the phone call interview referenced above, and requests reconsideration of the denial. It is noted that the petitioner fails to specifically address the director's first basis for the denial, in which it was concluded that the proffered position is not a specialty occupation.

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Upon review of the stated duties of the position, the AAO concurs with the director's finding that the proffered position is not a software engineer, and finds that a review of the DOL's *Occupational Outlook Handbook (Handbook)*, upon which the AAO routinely relies, indicates that the position is in fact akin to that of a web developer, which includes the position of webmaster as noted by the director.

The *Handbook* describes the occupation of web developer as follows:

Web developers design and create websites. They are responsible for the look of the site. They are also responsible for the site's technical aspects, such as performance and capacity, which are measures of a website's speed and how much traffic the site can handle. They also may create content for the site.

Web developers typically do the following:

- Meet with their clients or management to discuss the needs of the website and the expected needs of the website's audience and plan how it should look
- Create and debug applications for a website
- Write code for the site, using programming languages such as HTML or XML
- Work with other team members to determine what information the site will contain
- Work with graphics and other designers to determine the website's layout
- Integrate graphics, audio, and video into the website
- Monitor website traffic

When creating a website, developers have to make their client's vision a reality. They work with clients to determine what sites should be used for, including ecommerce, news, or gaming. The developer has to decide which applications and designs will fit the site best.

The following are some types of web developers:

Web architects or programmers are responsible for the overall technical construction of the website. They create the basic framework of the site and ensure that it works as expected. Web architects also establish procedures for allowing others to add new pages to the website and meet with management to discuss major changes to the site.

Web designers are responsible for how a website looks. They create the site's layout and integrate graphics; applications, such as a retail checkout tool; and other content into the site. They also write web-design programs in a variety of computer languages, such as HTML or JavaScript.

Webmasters maintain websites and keep them updated. They ensure that websites operate correctly and test for errors such as broken links. Many webmasters respond to user comments as well.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-2> (last visited May 29, 2012).²

A review of the *Handbook's* education and training requirements for this occupation, however, indicates that it does not require a bachelor's degree in a specific specialty or its equivalent for entry into the position. Specifically, the *Handbook* states, in relevant part, as follows:

Educational requirements for web developers vary with the setting they work in and the type of work they do. Requirements range from a high school diploma to a bachelor's degree. An associate's degree may be sufficient for webmasters who do not do a lot of programming.

However, for web architect or other, more technical, developer positions, some employers prefer workers who have at least a bachelor's degree in computer science, programming, or a related field.

Web developers need to have a thorough understanding of HTML. Many employers also want developers to understand other languages, such as JavaScript or SQL, as well as have some knowledge of multimedia publishing tools, such as Flash. Throughout their career, web developers must keep up to date on new tools and computer languages.

² Since the issuance of the director's decision, an updated version of the *Handbook* has become available.

Some employers prefer web developers who have both a computer degree and have taken classes in graphic design, especially when hiring developers who will be heavily involved in the website's visual appearance.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-4> (last visited May 29, 2012). Therefore, while the *Handbook* indicates that some more technical positions may require at least a bachelor's degree in computer science, programming or a related field, a high school diploma or associate's degree is also acceptable for entry into this occupational category. The *Handbook* does not state that a bachelor's degree in a specific specialty is a normal, minimum entry requirement for this occupation. Accordingly, it does not support the proffered position as being a specialty occupation. The petitioner, therefore, has failed to establish that it satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).³

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In response to the RFE, counsel for the petitioner claimed that the petitioner is a small company based in Utah and does not know of its competitors' hiring practices. However, it states that software engineer positions involving Internet applications development almost always require a bachelor's degree at a minimum, and two postings in support of this contention are submitted. However, the submitted postings are not sufficient to establish eligibility in this matter.

³ It is also noted again that the counsel for petitioner stated that degrees in "engineering, computer science, mathematics, physics or related fields" satisfy the minimum educational requirement for the proffered position. The AAO notes that such an assertion, i.e., the duties of the proffered position can be performed by a person with a degree in any one of those disciplines, implies that the proffered position is not, in fact, a specialty occupation.

More specifically and by way of example, the field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or engineering, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

The first posting is for the position of “Datamapper: Russian and Polish” with [REDACTED] an IT and computer software services company. There is no specific description of the poster’s business, but the general claim that it is engaged in IT and computer services distinguishes it from the petitioner, a nutritional supplement manufacturer with 20 employees. In addition, the posting simply states that the candidate should have a “bachelor’s degree or higher,” but fails to denote a specific specialty in which the degree should be obtained. Consequently, this posting fails to demonstrate a common degree requirement for parallel positions in similar organizations.

The second posting submitted is also insufficient. This posting, by [REDACTED] which claims to be the leading comparison shopping site for products and services, advertises for the position of “German Software Engineer.” However, [REDACTED] is likewise distinguishable in size and scope from the petitioner and, like the posting submitted from [REDACTED] only requires a bachelor’s degree without denoting a specific specialty for the degree. Since these postings fail to demonstrate that they are for parallel positions in similar organizations, and since the petitioner submits no additional evidence, such as letters from organizations within the petitioner’s industry attesting to general hiring standards for marketing analysts, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary’s educational background, bi-lingual abilities, and experience in the industry will assist him in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not address this prong on appeal, nor does the petitioner explain or clarify at any time in the record which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed employment. The petitioner has thus failed to establish that it has satisfied either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. In response to the RFE, counsel claimed that the petitioner previously hired one software engineer [REDACTED] and claims that he holds a bachelor of science degree in computer science. Although counsel refers to the petitioner’s organizational chart, on which Mr. [REDACTED] is listed, no independent evidence, such as payroll records and copies of his educational credentials, is submitted to support this contention. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, although the petitioner claims that the proffered position requires the incumbent to possess at least a bachelor's degree, this claim is not persuasive, since the record does not document that the duties of the proffered position require a baccalaureate or higher level of education in a specific specialty to perform them. While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 388. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than web developer positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner, through counsel, simply provides its own unsupported opinions with regard to the qualifications necessary for an individual to perform the duties of the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a degreed individual could perform them. The fact that the beneficiary is bi-lingual and that his educational background has prepared him for the duties of the proffered position does not establish that the position is inherently more specialized or complex than other similar but non-specialty-degreed employment.

Consequently, to the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) has been satisfied.

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The second issue before the AAO is whether a reasonable and credible offer of employment exists for the beneficiary.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

To qualify as a United States employer, all three criteria must be met. On Form I-129, the petitioner claims its Federal Employer Identification Number is [REDACTED] however, the U.S. Corporation Income Tax Return it submits into the record indicates that this number is assigned to [REDACTED]. While the record suggests that the petitioner is actually [REDACTED] doing business under the trade name of [REDACTED] insufficient evidence to support this finding is included in the record. Since the petition is filed under the name of [REDACTED] and there is no indication or evidence demonstrating that this company is organized under the above-referenced FEIN number, the petitioner fails to establish this criterion.

In addition, the evidence contained in the record is insufficient to establish that the petitioner engaged or would engage the beneficiary to work in the United States and had or would have an employer-employee relationship with the beneficiary.

The record in this matter contains no evidence, such as an offer of employment, or signed employment contract, demonstrating that the petitioner has engaged or would engage the beneficiary to work in the United States or will act as his employer with the right to hire, fire, and otherwise supervise his duties. Simply claiming that the beneficiary will work for the named petitioner in this matter without additional evidence is insufficient to establish eligibility in this matter. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner, therefore, provided no evidence that a valid employment agreement or credible offer of employment existed between the petitioner and the beneficiary. Therefore, the petitioner has failed to satisfy the requirements at 8 C.F.R. §§ 214.2(h)(4)(ii)(1) and (2).

Finally, the phone interview between the petitioner's president and USCIS on June 2, 2010 revealed additional inconsistencies in the petitioner's petition. First, it was revealed that the beneficiary is actually the brother-in-law of the petitioner's president, and that, contrary to the petitioner's claim that it had not previously filed any H-1B petitions, the wife of the petitioner's president was a prior H-1B beneficiary. While family relationships will generally not disqualify a petition's approval, all regulatory criteria must be met. As stated above, the petitioner failed to satisfy the regulatory criteria, and further

doubt regarding the validity of the petitioner's claims is now established based on the undisclosed family relationships and contradictory statements regarding the filing of prior H-1B petitions. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner has failed to establish that a reasonable and credible offer of employment exists for the beneficiary for the reasons set forth above, and the unresolved contradictory claims set forth during the telephone interview further raise questions regarding the validity of the petition in general. For this additional reason, the petition may not be approved.

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 is dismissed. The petition is denied.