U.S. Citizenship and Immigration Services

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

MATTER OF F-G-, INC.

DATE: AUG. 18, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a buyer and exporter of industrial boilers, textile machinery, and related parts, seeks to temporarily employ the Beneficiary as the president of its new office under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in an executive or managerial capacity.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of approval of the petition. Further, the Director found that the Petitioner did not demonstrate that it had secured sufficient physical premises to house its proposed new office.

The matter is now before us on appeal. In its appeal, the Petitioner contends that the Director misinterpreted the Beneficiary's proposed duties and its first year hiring plans. In addition, the Petitioner states that it has clearly established that it has ample space to accommodate its new office in the United States.

## I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the Beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the Beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity. *Id.*

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

*(1)* The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

*(2)* The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

*(3)* The organizational structure of the foreign entity.

## II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition, in part, based on a finding that the evidence of record did not establish that the Beneficiary would be employed in a managerial or executive capacity within one year of approval of the petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as "an assignment within an organization in which the employee primarily":

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as "an assignment within an organization in which the employee primarily":

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

A. Evidence of Record

The Petitioner filed the Form I-129 on August 31, 2015. On the Form I-129, the Petitioner indicated that it has one employee in the United States with projected gross revenue of $800,000 to $1 million for 2015. The Petitioner stated that its foreign affiliate is engaged in providing state of the art specialized services related to industrial boilers, equipment, engineering and automation, water treatment, and power generation in Pakistan. The Petitioner stated that the foreign entity employed "more than 20 engineers, 30 technicians, and 100 employees" in Pakistan. The Petitioner explained that the Beneficiary had been employed by the foreign entity as its manager, operations since 2012.

On the Form I-129 L Classification Supplement, the Petitioner stated that the Beneficiary, as president, will "oversee all aspects" of the new office, including "hiring, firing and employee promotion policies, major decisions concerning advertising, marketing, sales and other promotional and corporate communications activities as well as the appropriate targeted investment of company financial and other resources." The Petitioner did not further describe the proposed position at the time of filing.

The Petitioner submitted a "future organizational plan" reflecting that the Beneficiary would act as operations manager of its new office in the United States. The chart indicated that the Beneficiary would supervise two departments, an "administration" branch including to be staffed by a "finance, office manager" and an "operational branch" to be staffed by a purchasing and procurement manager, a mechanical engineer, and an imports and exports manager. The Petitioner provided a business plan stating that it planned on hiring the above mentioned employees "in [the] next coming years . . . to control company activities."

The Petitioner also submitted a letter signed by [redacted] managing director of the foreign entity, stating that the petitioning company would hire the four identified managers, and noting that "[i]f company required any employees to manage activities can be hired anytime Company [*sic*] works on no policy to hire new employees. It will depend on company growth, projects and other factors."

The Petitioner indicated that the purchase and procurement manager would be responsible for "making recommendations and implementing changes," supporting "the whole purchasing team," ensuring "training and development of the team," purchasing boilers and machinery, establishing strategic relationships and negotiating supply agreements. The Petitioner stated that the employee would be required to have five years of experience in purchasing and procurement and a degree in "a business related subject." The Petitioner explained that the imports and exports manager would be tasked with import and export regulatory compliance and managing logistic networks and would be

required to have more than six years of "operational experience in a logistics environment," "experience managing service providers" such as freight carriers and brokers, and "preferably" a business related bachelor's degree. In addition, the Petitioner stated that the mechanical engineer would need to have a bachelor's degree in mechanical engineering and would be responsible for "design and optimization of mechanical components," "analysis and specification of electro-mechanical and electro-hydraulic systems," developing boiler drawings and installations, and conferring with "system engineers and other personnel." Lastly, the Petitioner explained that the finance and office manager would be tasked with "day-to-day bookkeeping," banking, payroll, preparing accounts for "the senior management team," and consulting on finance matters with the "finance sub-committee."

The Petitioner submitted a bank account statement dated July 7, 2015, reflecting a balance of just over $11,000. The Petitioner's business plan did not identify the company's anticipated start-up costs or operating expenses for the first year of operations. letter stated that the foreign entity "will manage all salaries, office and other admin expense to support company" and "be responsible for all sort of expenses to manage" the petitioning company.

The Director later issued a request for evidence (RFE) advising that the Petitioner did not submit a detailed duty description for the Beneficiary and requested that it provide a letter detailing how the Beneficiary would act in a managerial or executive capacity within one year. The Director requested that the Petitioner describe the financial goals of the new office during the first year and document the size of the investment in the new venture. Finally, the Director asked the Petitioner to provide a business plan detailing its proposed sources of supply, contracts for materials or distribution, timetables for hiring, and sales, cost, and income projections.

In response, the Petitioner submitted a letter from the foreign entity, which indicated that the Beneficiary would be "Acting Chief Operating Officer" of the petitioning company. The Petitioner stated that it had a "plan to hire 5 permanent employees at different positions which can be double or more a year in conformity with the growth and profitability of the company." The Petitioner explained that the Beneficiary would perform some of the following duties in the areas of technical support, strategic planning, administrative, operation scheduling, and business management:

- look for new suppliers and partner in USA to sell their products in Pakistan
- set up company goals, objective redefining strategies of business for achieving company growth and development
- implementation of company's plans and strategies toward attaining of set goals
- exploring business opportunities, procurement, [and] research in USA
- hire new employees at different positions like Account & Office Manager, Export Manager, Mechanical Engineer, etc.
- monitoring and dismantling and shipping process, progress projects on a micro scale through ordering of goods in liaison with the organization of

suppliers deliveries, organization of labour and manipulating of work schedule to meet agreed time frames/dead lines
- dismantling monitoring, coordinating with seller, by co-ordinating with the client and [the Petitioner's] staff
- providing support to the technical team and client with dismantling and reinstallation drawings,
- piping design, process design, P & ID's, FD's, one of drawings, technical advice, guidance and knowledge
- assist sales team with technical advice, costing spread sheets and quotes for sales inquire[s] as well as go ahead projects
- work with clients and [Petitioner] staff on service work, equipment failures and potential business opportunities
- coordinate with the technical team and administration to answer queries such as job sheet and packing slip inquiries
- progress a measured and planned improvement of operational systems, processes and development of policies in support of [the Petitioner's] vision,
- contribute to short and long term organizational planning and strategy and future planning and projects
- procurement of customers requirement [for] Machinery and system (New & Used Boilers, Burner, and all other industrial machinery, equipments, etc.) from Inquiry generation to final shipment system to destination
- meet with the Team to discuss received inquiry
- procurement of required product, visiting the site and product, Inspection of product and system
- proposal arrangement for Pakistan Head office
- ensure that all products are within budget and on time
- ensure that all products are properly dismantled and are in good condition, quantity and stored
- all dismantling and installation drawings, properly arranged, quality certificates and other necessary inspections and performance certificates,
- maintain bought machinery within specific guidelines
- shipment arrangement from USA to customers in Pakistan & Asian Countries,
- proper documentation of export process from Bill of Lad[ing], Shipping List, Performa Invoice, etc.
- on sale close, has to arrange dismantling team or 3rd party arrangement.

In addition, the foreign entity stated "in the next coming years [the] Company will hire different employees at [the] Manager level to control company activities." The Petitioner re-submitted the organizational chart and position descriptions for each of the Beneficiary's proposed subordinates that were provided at the time of filing.

The Petitioner submitted a business plan indicating that it "will find customers for Industrial Boilers, textile Machinery, Power house Machinery, spare parts, sensors and other technological instruments

in Pakistan and surrounding territories." The Petitioner noted that "all these [*sic*] equipment will be procured from [the] USA." The Petitioner explained that it would "manage all activities per customer requirement and general purchases for our projects in Pakistan." The Petitioner explained that it would be a "small enterprise" and that it would purchase the products using a letter of credit. The Petitioner included a "business process flowchart" reflecting that the company would receive client requests from the foreign entity, confirm the specifications with the client, dismantle the machinery and equipment, and pack and export the equipment back to the foreign entity for client fulfillment. The Petitioner projected that the foreign entity would earn 487 million Pakistani Rupees in 2015-16.[1]

The Petitioner provided an executed "Memorandum" indicating its formation by and who agreed that "the funds required for the purpose of the business in the USA shall be provided by the pary [*sic*] of the part one and party of part two." The memorandum did not indicate the amount each owner agreed to invest in the new venture. The Petitioner also submitted a signed "Undertaking" from and stating that the following amounts were remitted to "[the Beneficiary,] Manager Operations (Acting Chief Operating Officer) in USA": $2,000 "remitted through [a] banking channel"; and $10,000 sent "personally by at the time of his visit to the USA in December 2014." The "Undertaking" also stated that $13,000 would be transmitted to the Beneficiary "personally from time to time." The Petitioner's most recent bank account statement dated November 4, 2015, reflected a balance of $7,610.84.

Further, the Petitioner provided a letter dated November 2, 2015, stating that the Beneficiary had been sent to the United States to visit partner companies, attend an and to complete "new company registration." The foreign entity indicated it would bear the Beneficiary's expenses while in the United States including travel, food, housing, and utilities. The foreign entity stated that it "has sent 50,000 US$ in different phase to complete all [the Beneficiary's] assignments."

In denying the petition, the Director concluded that the Beneficiary's job description indicated that he would be primarily engaged in non-qualifying tasks after one year. The Director noted that the Petitioner did not submit a timetable for hiring subordinates or submit income and financial projections for the company during the first year. The Director found that the evidence supported a conclusion that the Petitioner would not hire managers subordinate to the Beneficiary within one year.

In its appeal, the Petitioner contends that the Beneficiary's proposed duties only reflect tasks he will perform during the first year and not those he will be primarily engaged in after one year. The

[1] The foreign currency exchange rate indicates that this equates to nearly US $4.64 million. http://www.xe.com/currencyconverter/convert/?Amount=487000000&From=PKR&To=USD (last visited Aug. 15, 2016).

Petitioner asserts that it did set forth its hiring plans for the first year, namely, that it would hire five employees subordinate to the Beneficiary.

B. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has not established that the Beneficiary would be employed in a managerial or executive capacity in the United States within one year of approval of the new office petition.

When a new business is first established and commences operations, the regulations recognize that a designated manager or executive may be responsible for setting up operations and that often the full range of managerial responsibility cannot be performed in the first year. In turn, a beneficiary setting up a "new office" could be engaged in a variety of low level activities not normally considered qualifying consistent with the regulations. The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of the beneficiary in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See* 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, a petitioner must describe the nature of its business, its proposed organizational structure, financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary, all evidence meant to establish that a petitioner will commence doing business immediately in the United States. *Id.*

When examining the managerial or executive capacity of the Beneficiary, we will look first to the Petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The Petitioner's description of the job duties must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *Id.*

The definitions of managerial and executive capacity each have two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

In the current matter, as noted by the Director, the Petitioner has submitted a duty description that includes primarily non-qualifying operational tasks. Specifically, the Petitioner states that the

Beneficiary will be responsible for the dismantling and shipping of equipment, reinstallation drawings, providing technical advice, assisting the "sales team," working with clients on service and equipment failures, procuring customer requirements, inspecting products and systems for client solutions, proposal arrangement, maintenance of machinery, arrangement of shipping, and handling proper documentation for exportation. On appeal, the Petitioner states that these operational tasks will be performed by the Beneficiary only during the first year. However, it does not clearly articulate what qualifying managerial or executive tasks he will primarily engage in after one year. As such, we are unable to determine whether the claimed qualifying duties would constitute the majority of the Beneficiary's tasks after the first year. The Petitioner's description of the Beneficiary's job duties does not establish what proportion of the duties will be qualifying managerial or executive duties within one year, and what proportion will remain non-qualifying. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Indeed, to the extent the Petitioner includes managerial or executive duties in the Beneficiary's job description, the description is vague and does not to reflect his actual proposed tasks in detail. For instance, the Petitioner states that the Beneficiary will be responsible for implementing company plans and strategies, setting goals, improving operational systems, processes and development and development of policies, reviewing internal procedures, and contributing to future planning and projects. However, beyond generally indicating that the Petitioner will be responsible for purchasing equipment in the United States and shipping it to fulfill customer requirements in Pakistan, it has not otherwise articulated the Beneficiary's qualifying duties including plans and strategies it projects he will develop, goals he will or has set, operational systems he will improve, processes he will create, procedures he will review, and future planning and projects for which he will be responsible. We cannot conclude that a beneficiary will primarily perform qualifying tasks within one year if the Petitioner does not at least indicate the nature of these qualifying duties. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's proposed daily job duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Overall, the position description alone is insufficient to establish that a beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as a petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

The Director denied the petition partly because the Petitioner did not clearly describe its hiring plans or include a detailed hiring timetable. As such, the Director concluded that the Petitioner did not

demonstrate that it would likely hire sufficient employees during the first year to support the Beneficiary in a managerial or executive capacity. The Petitioner made vague statements in support letters as to its first year hiring plans, indicating that it would hire the Beneficiary's asserted managerial subordinates "in the next coming years." Now on appeal, the Petitioner states that it planned to hire all five of the Beneficiary's subordinates during the first year, an assertion that is inconsistent with its previous statements. Further, the Petitioner has not provided a more specific timetable, setting forth during what months in the first year that these proposed subordinates will be hired. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the Petitioner asserts that it plans on hiring a purchase and procurement manager, an imports and exports manager, a mechanical engineer, and a finance and office manager. Each of the duty descriptions for these employees suggests that they would be responsible for overseeing and directing subordinate operational employees, including a "purchasing team," "logistics," "systems engineers," a "sales team," and a "finance sub-committee." However, the Petitioner's organizational chart does not account for subordinates reporting to the Beneficiary's proposed subordinates and its hiring plans make no mention of these operational employees. For this reason, the job descriptions submitted for the Beneficiary's subordinates appear to be speculative at best and may describe the duties they would perform at some unspecified date when the company is fully staffed.

Further, even if the Petitioner had consistently stated that it would hire the five employees identified on its proposed organizational chart during the first year of operations, the record does not contain any corroborating evidence establishing that the petitioning company would be able to support six employees within one year. The regulations require that the Petitioner establish the size of the United States investment, and further, that this is sufficient to launch the business and to support the Beneficiary in a managerial or executive capacity during the first year. 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*).

As noted above, the Petitioner submitted a document, "Undertaking," from the foreign entity indicating that $2,000 was "remitted through [a] banking channel" and another $10,000 provided by 50% owner of the company to the Beneficiary. The document also stated that another $13,000 would be provided to the Beneficiary "personally from time to time." The Petitioner's most recent bank statement from November 4, 2015, a few months after the petition was filed, reflects a balance of $7,610.84. This evidence is insufficient to meet the requirements of 8 C.F.R. § 214.2(l)(1)(3)(v)(C)(*2*). We acknowledge that the foreign entity stated that it will provide financial support to the new office, but the Petitioner did not respond to the Director's request for a business plan, including the new office's sales, cost, and income projections. The Petitioner did not provide any detailed cost or financial projections specific to its operation in the United States to support the projected income figures of $800,000 to $1 million it stated on the Form I-129. The foreign entity's assurance that it will pay all costs associated with the new office is insufficient to establish that the Petitioner would grow and be able to support a managerial or executive position within one year.

As requested and later noted by the Director, the Petitioner did not submit any financial projections for the business to clarify how it would support the Beneficiary and his proposed subordinates during the first year. The Petitioner referenced the use of letters of credit to purchase equipment, but it did not (1) submit any supporting documentation to substantiate that this financing is available to purchase equipment, (2) designate the amount of credit available, and (3) explain how it will aid in launching the business. Further, although the Petitioner also suggests that it has paid out approximately $50,000 to date to accommodate the Beneficiary's trip to the United States and the initial formation of the business, it does not document these payments by the foreign entity nor explain how this reimbursement will lead to its sufficient development during the first year. 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'r 1998) (quoting *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity in the United States within one year of approval of the new office petition.

## III. PHYSICAL PREMISES

The Director also denied the petition based on a finding that the Petitioner did not establish that it has acquired sufficient physical premises to conduct its business. *See* 8 C.F.R. § 214.2(l)(3)(v)(A). The Director pointed to the fact that the submitted lease agreement was not executed by a representative of the Petitioner and signed by the landlord after the commencement of the lease. The Director concluded that the Petitioner's submittal of a fully executed lease on a different date represented a material change to the petition.

On appeal, the Petitioner states that the new lease provided in response to the RFE did not represent a material change, but the correction of a "harmless error." The Petitioner submits additional evidence indicating that it has a valid lease agreement.

Upon review, we find that the Petitioner has submitted adequate evidence to establish that it more likely than not has acquired sufficient physical premises to launch its business. As such, the Director's decision as to this issue will be withdrawn.

## IV. CONCLUSION

Despite the withdrawal of the Director's decision with respect to sufficient physical premises, the petition will be denied and the appeal dismissed because the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity in the United States within one year of approval of the new office petition. In visa petition proceedings, the burden of proving

eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-G-, Inc.*, ID# 17939 (AAO Aug. 18, 2016)