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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-B-A-

DATE: DEC. 10, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a special education teacher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the immigrant visa petition. We dismissed a subsequent appeal. The Petitioner filed motions to reopen and reconsider which we also dismissed. The matter is again before us on motions to reopen and reconsider. The motions will be denied.

The Petitioner seeks employment as a special education teacher for The Petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The Director found that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the Petitioner has not established that a waiver of a job offer would be in the national interest. We dismissed the Petitioner's appeal on November 18, 2014, and his subsequent motions on May 8, 2015. A fuller discussion of the underlying issues appears in our prior decisions.

On current motion, the Petitioner submits a brief and additional evidence. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." *Matter of New York State Dep't of Transp.* (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must demonstrate that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must show that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 10, 2013. The Director found that the Petitioner's employment as a special education teacher was in an area of substantial intrinsic merit, but that the benefits of the Petitioner's work were not national in scope. The Director noted that although education is in the national interest, the impact of a single teacher in one school would not be national in scope for purposes of waiving the job offer requirement of section

203(b)(2)(B) of the Act. *See NYSDOT*, 22 I&N Dec.at 217, n.3. In addition, the Director determined that the Petitioner's past achievements did not serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. We concurred with the Director's findings on appeal and again on motion.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions or legal citation to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *See Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Id.* Rather, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

On motion, the Petitioner mentions a November 20, 2014, memorandum from Jeh Johnson, Secretary of the U.S. Department of Homeland Security, to León Rodríguez, Director of USCIS, entitled "Policies Supporting U.S. High-Skilled Businesses and Workers." With respect to the national interest waiver, the memorandum states: "This waiver is underutilized and there is limited guidance with respect to its invocation. I hereby direct USCIS to issue guidance or regulations to clarify the standard by which a national interest waiver can be granted, with the aim of promoting its greater use for the benefit of the U.S. economy." The memorandum does not call for increasing the number of public school teachers or special educators eligible for the national interest waiver. Instead, the memorandum focuses on "foreign inventors, researchers, and founders of start-up enterprises wishing to conduct research and development and create jobs in the United States." The Petitioner has not shown how the memorandum supports his eligibility as a special education teacher.

Regardless, USCIS has not yet issued any new guidance or regulations clarifying the national interest waiver eligibility standards in response to the Secretary's memorandum, and the memorandum does not itself set forth any specific guidance. A concern about underutilization of the national interest waiver benefit in general is not indicative that any particular decision USCIS has previously issued constituted an error of law or policy. The existing *NYSDOT* guidelines require the Petitioner to establish the national scope of his benefits and that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications, and he has not done so

in this matter. *See NYSDOT*, 22 I&N Dec. at 217-18. With regard to following the guidelines set forth in *NYSDOT*, USCIS, by law, does not have the discretion to ignore binding precedent. *See* 8 C.F.R. § 103.3(c). In the present matter, there is no documentary evidence showing that the Petitioner's work has helped benefit the U.S. economy or educational system such that it has had a national effect.

The Petitoner repeats assertions made earlier in these proceedings concerning [redacted] an organization he formed "to help students with special needs get the best resources in terms or curricular service, human consideraton and job placement and training." Previously, the Petitioner submitted online content printed from [redacted] that stated: [redacted] is to be formalized into a foundation. Based on the proposal, the whole program will take three years from conception to evaluation. [redacted] as a website will implement the proposed modules for Life Skills for teachers' training and education." The Petitioner also submitted a "Timeline for Implementation of Proposal" dated December 9, 2014.

With respect to the Petitioner's educational proposal, the documentation provided does not indicate that he has a successful track record of introducing any novel programs nationwide, nor does it demonstrate his influence on the field as a special education program developer or resource consultant. Furthermore, while the Petitioner's brief in support of the motion states that he submitted his proposal to "the White House and the Department of Education for further study," there is no evidence showing that they have plans to implement any educational programs based on his proposal. In addition, the Petitioner describes a January 2015 meeting with [redacted] Executive Director of the Special Education Department in [redacted], in which he "introduced the elements of the program." The Petitioner, however, has not shown that [redacted] or any other school system has expressed any intention to implement his particular program. Furthermore, the proposal and the Petitioner's meeting with [redacted] post-date the Form I-140 petition's filing date of June 10, 2013. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). As the SPEDUCATION foundation apparently did not exist, even as a proposal, when the Petitioner filed the Form I-140 petition on June 10, 2013, the Petitioner's subsequent development of the proposal cannot retroactively qualify him for that earlier priority date. Regardless, there is no evidence showing that the components of his program and its modules have had a national impact or influenced the field of special education as a whole.

The Petitioner also mentions his seventeen years of teaching experience, professional credentials, and expertise in special education. Any assertion that a petitioner possesses useful skills, or a "unique background" relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec. at 221. In addition, the Petitioner asserts that his skills and abilities are not amenable to the labor certification process. The inapplicability or unavailability of a labor certification, however, cannot be viewed as sufficient cause for a national interest waiver; a petitioner still must demonstrate that he will serve the national interest to a substantially greater degree than do others in his field. *Id.* at 218, n.5. The Petitioner also references various legislative actions aimed at improving education for special needs children. While these initiatives address the

need for adequate special education services in the United States and the intrinsic merit of providing such services, there is no documentary evidence showing that the Petitioner's work as a special education teacher satisfies the remaining two prongs of the *NYSDOT* analysis.

The Petitioner does not support the motion to reconsider with any pertinent precedent decisions or legal citations that demonstrate our latest decision was based on an incorrect application of law, existing and currently binding precedent, or clearly articulated USCIS policy. In addition, the motion does not establish that our decision was incorrect based on the evidence of record at the time of the decision. Accordingly, the motion to reconsider is denied.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

On motion, the Petitioner submits a personal statement discussing his academic achievements, professional accomplishments, and future goals, but there is no documentary evidence showing that his work has influenced the field as a whole. For example, the Petitioner mentions his development of websites such as and As discussed in our previous decisions, there is no evidence showing that the Petitioner's website content is frequently cited by educational scholars or that his work has otherwise affected the field of special education as a whole.

In addition, the Petitioner provides a statement describing his January 2015 meeting with and their discussion of his educational proposal. Again, we cannot consider their January 2015 meeting evidence to establish the Petitioner's eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Regardless, there is no evidence showing that intends to implement the Petitioner's proposal and that his work has already influenced the field as a whole.

The documentation submitted on motion also includes three articles entitled ' The aforementioned articles were not authored by the Petitioner and they are not about his work in the field of special education. General arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *NYSDOT*, 22 I&N Dec. at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest analysis. None of the articles provided demonstrate that the Petitioner's specific work as a special education teacher has affected the field as a whole.

The motion to reopen does not include any new facts or other documentary evidence to overcome the grounds underlying our previous findings. The Petitioner has not demonstrated a past record of

achievement at a level that would justify a waiver of the job offer requirement. The Petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, a petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole"). Accordingly, the motion to reopen is denied.

In this matter, the Petitioner has not established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest of the United States. As the evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision, and the motion to reconsider is not supported by any pertinent precedent decisions or legal citations that demonstrate our latest decision was based on an incorrect application of law or USCIS policy, the motions are denied. 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, the Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-B-A-*, ID# 14665 (AAO Dec. 10, 2015)