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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-L-A-W-

DATE: OCT. 14, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an educator, 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 matter is now before us on motions to reopen and reconsider. The motions will be denied.

The Petitioner presently works as a Family and Consumer Science Teacher for [redacted] in Virginia. Previously, the Petitioner was employed as a Career and Technical Education Teacher for [redacted] Public Schools' [redacted]. 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 an exemption from the requirement of a job offer would be in the national interest of the United States. We dismissed the Petitioner's appeal on April 6, 2015. A fuller discussion of the underlying issues appears in our appellate decision.

On 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 she 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 she 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 Immigrant Petition for Alien Worker (Form I-140) on April 19, 2013. In an accompanying statement, the Petitioner provided details about her past teaching career and addressed the three prongs of the *NYSDOT* national interest analysis. The Director found that the Petitioner's employment as an educator was in an area of substantial intrinsic merit, but that the

benefits of her 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. *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 upheld the Director's findings on appeal.

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.* Instead, 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 repeats assertions made earlier in these proceedings stating:

> [The Petitioner's] proposed benefit to make teen and pre-teens aware of the major risks and challenges associated with the use of the emergency contraceptive pill is a national scope subject and an issue with repercussion across the United States. [The Petitioner's] proposal not only benefits the national interest, but also encourages and promotes the overall health rate of young women, as well as directly impacts the population growing rate in our country.

Regarding the second prong of the *NYSDOT* national interest analysis, the Petitioner proposes to develop new health curricula based on her concern with the implications of over-the-counter emergency contraception. The Petitoner's assertion that her sexual education program could have a national impact does not sufficiently demonstrate the national scope of her proposed benefit. The record does not establish that the Petitioner's proposed employment as a public school educator is within a framework that typically has a national impact, such as the proper maintenance of bridges and roads already connected to the national transportation system that was the subject of *NYSDOT*. *NYSDOT,* 22 I&N Dec. at 217.

The Petitioner mentions the need for sexual and parenting education in the United States, and describes her proposal to replicate the educational system. As discussed in our April 2015 decision, Virginia implemented the program in the 1970s, and the record contains no evidence that other states have expressed an interest in the Petitioner's program or that they do not already provide a similar program. According to the letter from , Management and Program Analyst at the U.S. Department of Education, "[c]urriculum development and course content are solely the responsibility of state and local education officials." The Petitioner has not demonstrated the existence of a national framework for health curricula or asserted that she proposes to work as a curriculum consultant advising state and local education officials nationwide. Rather, the Petitioner is presently working as a Family and Consumer Science Teacher at High School within Accordingly, the Petitioner has not established that the benefits of her work will be national in scope.

With respect to the third prong of the *NYSDOT* national interest analysis, we noted in our April 2015 decision that the Petitioner is an experienced teacher who excels in the classroom and has creative ideas. The Petitioner, however, did not demonstrate that she has impacted the field to a substantially greater degree than other similarly qualified educators or establish that her specific work has had significant impact outside of the institutions where she has taught. On motion, the Petitioner quotes from an unpublished abstract that she authored in 2012, but there is no documentary evidence indicating that her abstract has influenced the field as a whole. The unpublished abstract proposes that "[t]he programs offered at under the leadership of be "adapted and implemented in other school districts." The abstract does not explain the Petitioner's role in the programs offered at the or the impact of the programs on the field. Furthermore, the Petitioner has not shown how the program has performed in Virginia since its implementation in the 1970s, or demonstrated that other states have taken notice of the program during the Petitioner's involvement from August 2010 – August 2012. Moreover, while the Petitioner is an effective teacher, the submitted evidence does not indicate that she has a successful track record of introducing novel programs nationwide, or demonstrate her influence on the field as a sex education curriculum consultant.

In regard to our determination that the Petitioner did not establish that she meets the second and third prongs of the *NYSDOT* national interest analysis, the Petitioner's motion to reconsider is not supported by any pertinent precedent decisions or legal citations that demonstrate our April 2015 decision was based on an incorrect application of law or 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. Therefore, 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 May 2015 letter from [redacted] Regional Director, [redacted], [redacted] Jamaica, stating that the Petitioner served the Jamaica [redacted] "as an adjudicator for the practical areas of Food and Nutrition," that she worked "as an Assessor for the popular [redacted] done by Grade 11 students," and that she graded exams for students in Grades 7-9 as part of the "Reform of Education" new curriculum assessment. While [redacted] comments on the Petitioner's experience as an evaluator, she does not provide specific examples of how the Petitioner's work has influenced the field as a whole. Furthermore, any objective qualifications that are necessary for the performance of the occupation can be articulated in an application for labor certification. *See NYSDOT*, 22 I&N Dec. at 220-221.

In addition, the Petitioner provides an April 2015 letter from [redacted] Lead Consultant for [redacted], stating that the Petitioner served "as an evaluator at . . . State [redacted] Events." The Petitioner also submits her 2015 [redacted] identification card reflecting that she was an "Adviser" for [redacted] High School, a 2015 [redacted] Events ribbon from the [redacted] identifying her as an Evaluator, and a 2015 professional development certificate indicating that she "earned 7 Individual Recertification Points" by participating in "Student Leadership Through [redacted] Events." The Petitioner's involvement in the [redacted] events occurred subsequent to the petition's filing date of April 19, 2013. Eligibility, however, 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). Accordingly, we cannot consider the Petitioner's activities from 2015 as evidence to establish her eligibility at the time of filing. Regardless, there is no evidence demonstrating that the Petitioner's service as an evaluator and adviser for [redacted] events has affected educational practices outside of Virginia or has otherwise influenced the field as a whole. Although participating in extracurricular activities and earning recertification points are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

Furthermore, the Petitioner's motion includes her 2014-2015 teacher "Evaluation Report" from [redacted] reflecting ratings of "Meeting Standard" in six performance categories and "Exceeding Standard" in the "Instructional Delivery" category. The submitted report, however, concerned the Petitioner's teaching performance after she filed the Form I-140 on April 19, 2013. Again, 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. at 49. Regardless, the Petitioner has not demonstrated how the evaluation report reflects that she has impacted the field to a substantially greater degree than other similary qualified educators and how her specific work has had significant impact outside of the school where she has taught.

The Petitioner also submits [redacted] a "magazine for the 2002-2003 academic year of [redacted] High School," which lists the Petitioner as a member of the school's "Magazine Committee." There is no documentary evidence showing that the Petitioner's work on the magazine

committee or as a teacher at the high school had a national impact or has otherwise affected the field as a whole.

Lastly, the Petitioner requests favorable discretion because she is fighting breast cancer and depends on health insurance and income derived from her employment with The Petitioner submits information from her health care provider detailing her medical condition. While we sympathize with the Petitioner's current health situation, it does not establish that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

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 established that the benefits of her work are national in scope or that her past record of achievement is at a level that would justify a waiver of the job offer requirement. Accordingly, the motion to reopen is denied.

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the petitioner. A petitioner "must clearly present a significant benefit to the field of endeavor." *NYSDOT,* 22 I&N Dec. 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"). On the basis of the evidence submitted, 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 submitted on 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-L-A-W-*, ID# 14409 (AAO Oct. 14, 2015)