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

(b)(6)

DATE: APR 21 2014 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that decision, as well as a subsequent motion to reconsider. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The AAO will grant the motion to reopen, dismiss the motion to reconsider and affirm the denial of the petition.

The petitioner filed the Form I-140 petition on May 2, 2012, seeking classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an elementary special education teacher at Maryland. 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 denied the petition on October 27, 2012, having found 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. The AAO dismissed the petitioner's appeal from that decision on March 18, 2013. The AAO then dismissed the petitioner's motion to reconsider on November 5, 2013, because that filing did not meet the requirements of such a motion.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions 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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In her first motion, the petitioner did not claim that the decision was based on an incorrect application of law or USCIS policy, or that the decision was incorrect based on the evidence of record at the time of the initial decision. Instead, she asked to remain in the United States "for the next 3 years" for various family-related reasons. In dismissing that motion, the AAO stated:

> [T]he petitioner does not contest the decision or allege any error of fact or law. Instead, the petitioner seeks favorable treatment based on family considerations. There is no provision of law or regulation to allow reconsideration on this basis. The national interest waiver is not a humanitarian provision, and neither is the motion to reconsider. The petitioner's stated desire to remain in the United States is not grounds for approval of the petition, or a basis to reconsider the prior decision.
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> The petitioner requests that, if she and her family cannot remain permanently in the United States, they should at least be able to stay long enough for her adult daughters (born in 1991 and 1992, respectively) to complete their studies. This is not the benefit that the petitioner sought when she filed the employment-based immigrant petition.
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> There exists no mechanism whereby USCIS can convert the petitioner's denied immigrant petition into an unspecified status for her daughters. The denial of the

present petition does not prohibit the petitioner and her daughters from seeking immigrant or nonimmigrant status through other means.

On motion, the petitioner does not identify any errors of fact or law in the AAO's decision on her previous motion. Because the motion does not establish that the decision was based on an incorrect application of law or USCIS policy, and does not establish that the decision was incorrect based on the evidence of record at the time of the initial decision, the motion does not meet the requirements of a motion to reconsider and must be dismissed. *See* 8 C.F.R. §§ 103.5(a)(3), (4).

The petitioner makes new claims, submits additional evidence, and seeks to revisit the underlying petition. The new evidence qualifies the motion as a motion to reopen under 8 C.F.R. § 103.5(a)(2).

In a new statement submitted with the second motion, the petitioner states that a "special situation" applies, because her "family and relatives back in the Philippines are victims of the recent devastation brought by the 4.2 earthquake in Bohol and Typhoon Haiyan in the Leyte provinces." The petitioner states: "I am not directly a victim of these calamities but . . . my family now will temporarily yet indefinitely not have a home to go back to." The petitioner also asserts that, of all her relatives, she is "the most equipped to help them rebuild their livelihood and homes."

The petitioner submits a printout of a page from USCIS's web site, entitled "USCIS Reminds Filipino Nationals Impacted by Typhoon Haiyan of Available Immigration Relief Measures." The page listed seven such measures, including "Expedited processing of immigrant petitions for immediate relatives of U.S. citizens and lawful permanent residents" and "Extension of certain grants of parole made by USCIS." The page also provided instructions on how to obtain more information. The web page did not indicate that previously denied employment-based petitions such as this would be reopened, reconsidered, or approved as a result of the natural disasters in the Philippines.

The petitioner shows that she and several relatives have obtained employment authorization documents from USCIS. The petitioner documents her family's employment activities and academic achievements, and asserts that her "family is not a burden to the US economy," and that she "helps improve the U.S. economy and improve[s] working conditions of the U.S. through filing of taxes annually." The director did not deny the petition because of a perception that the petitioner and/or her family would be a burden on the U.S. economy.

The petitioner seeks an immigrant classification that ordinarily requires a job offer from a U.S. employer and a labor certification approved by the U.S. Department of Labor, even when the United States would substantially benefit prospectively from her employment. *See* section 203(b)(2)(A) of the Act and 8 C.F.R. § 204.5(k)(4)(i). The petitioner seeks a national interest waiver of the job offer requirement under section 203(b)(2)(B)(i) of the Act. More information about the requirements for the waiver appears in a published USCIS precedent decision, *In re New York State Dep't of Transportation* (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998). The AAO's March 18, 2013 decision, dismissing the petitioner's appeal, described they key factors in that precedent decision. The assertion that the petitioner and her family will continue to work and pay taxes does not establish that it is in the national interest to waive the job offer/labor certification requirement that, by law, normally applies to the immigrant classification that she has chosen to seek.

The assertion that is most relevant to the petition is the petitioner's claim that her "special education position has directly contributed to a hard-to-staff school [and] thus helps improve U.S. Title 1 schools[']improvement."[1] The petitioner cites studies showing high turnover rate at such schools, and statistics relating to the Title I status of

The March 18, 2013 appellate decision discussed the petitioner's claim that teachers at disadvantaged schools ought to qualify for the national interest waiver. That decision indicated that the petitioner had not shown that teachers in her district "are collectively entitled to a blanket waiver of the job offer/labor certification requirement." The petitioner, on motion, does not address or rebut the conclusions reached in that discussion. Instead, the petitioner presents a variation of the same claim, indicating that she should receive a national interest waiver because her school has difficulty recruiting and retaining teachers. The labor certification process that the petitioner seeks to waive already takes local shortages into account. *See NYSDOT*, 22 I&N Dec. 218.

The petitioner's submission does not meet the requirements of a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(4) therefore requires the dismissal of the motion. The petitioner has submitted new evidence, qualifying the filing as a motion to reopen, but the newly submitted evidence does not establish the petitioner's eligibility for the benefit sought.

ORDER: The motion to reconsider is dismissed. The denial of the petition is affirmed.

[1] Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 *et seq.*, concerns schools with high numbers of disadvantaged children.