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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 2 2 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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. We will withdraw the director's decision. Because the petitioner has not established eligibility for the benefit sought, we will remand the petition for a new decision.

The petitioner seeks classification pursuant to 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 a mathematics teacher at Maryland, where the petitioner began teaching in 2006. 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 had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner states:

> The USCIS grounds for denial as provided in their decision failed to give sufficient weight to the evidence provided on RFE regarding my participation in national professional organizations and most importantly my ongoing contributions to the field of mathematics education through my on-line educational and tutorial activities. My activities with these organizations and my providing of on-line educational and tutorial services was well documented in my RFE response, but was not mentioned or referenced in the Denial Decision.

The record supports the petitioner's assertion. The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 29, 2012, with an introductory statement and several supporting exhibits. The director issued a request for evidence (RFE) on November 8, 2012. The petitioner's response to the RFE included, as before, a statement and numerous exhibits.

The director denied the petition on October 2, 2013. In that decision, the director listed the petitioner's exhibits in bullet form, with 14 entries for the petitioner's initial evidence and 15 entries for the petitioner's RFE response. The lists, however, do not accurately reflect what the petitioner submitted. In particular, the list of exhibits in the RFE response does not match what the petitioner submitted. The director, for instance, stated that the petitioner had submitted President George H.W. Bush's "Remarks on Signing the Immigration Act of 1990," "Copies of five (5) articles written by the self-petitioner," and a "Letter from dated March 24, 2003." None of these exhibits appeared in the petitioner's RFE response, and the director's list did not include any of the specific materials that the petitioner did submit in that response.

The bottom of each page of the director's decision bears the date "01/13/2012," which predates the filing of the petition by more than five months, and the decision incorrectly gives the date of the RFE as "December 18, 2011," six months before the petition's filing date and nearly eleven months before the actual date of the RFE. The exhibit lists, therefore, appear to reflect the contents of a different record of proceeding.

Also, the director stated: "The petitioner has submitted evidence that she has written articles. A search of *Google Scholar* and the *Library of Congress* show no evidence of publication under the self-petitioner's name. Without proof of publication there is no evidence to show that the self-petitioner's articles have reached a national audience." If the petitioner had claimed to have published articles, and inquiry outside the record of proceeding appeared to contradict that claim, then the discrepancy would require notification of derogatory information as described at 8 C.F.R. § 103.2(b)(16); the information could not properly surface for the first time in the denial notice. In this instance, the petitioner has not claimed to be the author of published articles, and therefore the quoted passage appears, again, to derive from an earlier decision relating to a different petition.

While the record contains some correct details, such as the petition's filing date and the names of officials at the petitioner's school, most of the information describing the evidence of record is incorrect. The director's written denial notice, therefore, does not establish that the director reviewed and considered the actual evidence in the record. For this reason, we will withdraw the director's decision.

Although the director did not accurately describe the evidence of record, the evidence that the petitioner actually provided does not support approval of the petition. The director's general, overall conclusions appear to be correct, but the director's initial determination must rest on the evidence of record.

The initial filing included the claim that the petitioner's "work . . . is serving as a model to other school systems around the country with respect to models and curricula that can produce significant improvements in student's [*sic*] learning and comprehension." The petitioner's response to the RFE included the claim that her "national web-based postings of mathematics lessons and instructional videos . . . are truly groundbreaking, and have been well received by students and teachers throughout the country." These are significant claims which, if true, would offer considerable support for approval of the national interest waiver. The petitioner, however, has not substantiated these claims. At most, she has shown that she posted some lesson plans on a web site called and that two teachers at her school, along with four students from unidentified schools, all submitted comments regarding those plans within a 16-hour period on March 2-3, 2013.

The record does not support approval of the petition. The director's denial, however, relied on an inaccurate reading of the record. The petitioner, therefore, must have the opportunity to respond to a decision that more accurately addresses the strengths and weaknesses of the submitted evidence. The burden remains on the petitioner 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).

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.