



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 01 2014** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 petitioner appealed the decision to us at the Administrative Appeals Office (AAO). We dismissed the appeal. The matter is now before us on a motion to reconsider. We will dismiss the motion. The petition will remain denied.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on January 14, 2013, seeking classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the arts and/or as a member of the professions holding an advanced degree. The petitioner seeks employment as a “teacher therapist and sculptor.” 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 9, 2013, having determined that the petitioner “qualifies for the requested classification[] as a member of the professions holding an advanced degree or an alien of exceptional ability,” but had 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 4, 2014, stating that the petitioner was ineligible on two grounds. First, we agreed with the director that the petitioner had not established eligibility for the national interest waiver. Second, we found that the petitioner had not established that she qualifies for the underlying immigrant classification. Our April 2014 decision contains additional details.

On motion, the petitioner submits a statement that focuses on the second stated ground identified above.

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 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).

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

In our April 2014 dismissal notice, we found that the record did not support the director's conclusion that "[t]he evidence shows that the beneficiary qualifies for the requested classifications [*sic*] as a member of the professions holding an advanced degree or an alien of exceptional ability." The petitioner, on motion, maintains that she qualifies for both classifications.

I. Member of the Professions

We will first consider the petitioner's claim to qualify as a member of the professions holding an advanced degree. In our April 2014 decision, we acknowledged that the petitioner holds a degree equivalent to a "Master's Degree in Fine Arts with a specialization in Sculpture," but we noted:

The possession of an advanced degree does not establish that the petitioner is a member of the professions holding an advanced degree. The petitioner's intended occupation must meet the regulatory definition of a profession. "Profession" means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

To determine whether the petitioner qualifies as a member of the professions, we turn not to her individual qualifications or credentials, but to the nature of the occupation in which she seeks employment.

The petitioner and various letter writers have referred to the petitioner's work as "art therapy." In our April 2014 decision, we stated:

Art therapy appears to constitute a profession, but the petitioner has not established that she has any employment prospects as an art therapist, or holds the credentials of an art therapist.

The record indicates, instead, that she seeks employment at a day care center, using some of the methods of art therapy in the context of employment as an art teacher. The statutory definition of a profession includes "teachers in elementary or secondary schools, colleges, academies, or seminaries," but not at day care centers. According to the Department of Labor's *Occupational Outlook Handbook*, the entry-level degree for preschool teachers is an associate's degree rather than a bachelor's degree. While the petitioner holds a degree in sculpture, there is no evidence that a bachelor's degree is required for entry into the occupation of sculpting. Therefore, the "sculptor" element of the petitioner's intended employment is not a profession.

For the above reasons, the petitioner has not established eligibility for classification as a member of the professions holding an advanced degree.

(Footnotes omitted.) On motion, noting that we stated “[a]rt therapy appears to constitute a profession,” the petitioner states: “The key word in AAO’s conclusion is ‘appears.’ AAO wrongly, groundlessly and autocratically decided that art therapy is a profession. Actually, Art Therapy is just [a] method and could be used by any artist or teacher.”

Our conclusion was not “groundless,” as the petitioner now claims. We cited specific sources, noting that New York States has “licensure requirements for ‘Creative Arts Therapists’” and stating:

According to the [REDACTED] “[a] master’s degree is required for entry level practice in art therapy. Minimum educational and professional standards for the profession are established by the [REDACTED] a membership and advocacy organization.”

The petitioner does not address this cited evidence. Instead, the petitioner maintains that “Art Therapy is just [a] method,” but the petitioner submits no evidence to support this claim. 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) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

Even if the petitioner had established that art therapy is not a profession, such a showing would not have resulted in approval of the petition, or overcome our finding that she had not established eligibility for the immigrant classification she seeks. If art therapy is a profession, then the petitioner would need to establish that she holds the required credentials to work in that field, which she has not done. If, on the other hand, art therapy is not a profession but “just [a] method,” then the petitioner’s use of that method does not make her a member of the professions.

The petitioner then states: “Another contradiction in [the decision] by AAO is whether my diploma as sculptor is appropriate for a given immigration category. . . . [A]ccording [to] AAO ‘Sculptor’ is not [a] profession!” The petitioner states that our own decision contradicts this finding, because we had recognized the petitioner’s submission of a certificate from the Rector of the [REDACTED]. According to the translation in the record, the certificate “conferred on [the petitioner] the qualification of the Professional Artist with having [sic] the right of the pedagogical practice in the higher institutes.”

The use of the term “professional” does not settle the matter. For the purposes of this proceeding, we must use the regulatory definition of a “profession” at 8 C.F.R. § 204.5(k)(2): “one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.” The petitioner has not established that a bachelor’s degree is the minimum requirement

for entry into the occupation of a sculptor. The petitioner's possession of a degree in sculpture does not show that one must hold such a degree in order to become a sculptor.

The petitioner's "Professional Artist" certificate permits her to teach "in the higher institutes." Teaching at that level qualifies as a profession, because section 101(a)(32) of the Act lists "teachers in elementary or secondary schools, colleges, academies, or seminaries." The petitioner, however, has not claimed that she will teach at such institutions. As we noted in our earlier decision, the statutory definition does not include teachers at day care centers. Her possession of a professional qualification to teach "in the higher institutes" does not qualify her as a member of the professions if she does not actually use that credential as intended. See *Matter of Medina*, 13 I&N Dec. 506, 507 (Reg'l Comm'r 1970), citing *Matter of Shin*, 11 I. & N. Dec. 686, 688 (Dist. Dir. 1966) ("The mere acquisition of a degree or equivalent experience does not, of itself, qualify a person as a member of a 'profession.'")

For the reasons discussed above, the petitioner has not established that her present occupation in the United States qualifies as a profession.

II. Exceptional Ability

The second issue under consideration is the petitioner's claim to qualify as an alien of exceptional ability in the arts. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which the petitioner must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business:

- (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
- (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
- (C) A license to practice the profession or certification for a particular profession or occupation;
- (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
- (E) Evidence of membership in professional associations; or
- (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

In our April 2014 decision, we concluded that the petitioner had met only two of the criteria, described at (A) and (C) above. Regarding criterion (C), we stated: “A ‘Reference’ certificate from the Rector of the Tbilisi State Academy of Arts ‘conferred on [the petitioner] the qualification of the Professional Artist with having [sic] the right of the pedagogical practice in the higher institutes.’” On motion, the petitioner states: “AAO just refers to the [certificate] and made no conclusion [as to whether] I satisfy this criterion or not.” To clarify, the document satisfies the plain wording of the regulatory criterion. If the petitioner had satisfied three criteria, then we would have proceeded to a final merits determination, in which we would have further discussed the relevance of the certificate.

The petitioner, on motion, asserts that she had met the criteria at (B) and (F) as well.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

In our April 2014 decision, we stated: “The petitioner has not met this criterion. She has not specifically documented any full-time employment experience, and the earliest employment-related documentation in the record dates from June 2005, less than seven years before the petition’s January 2013 filing date.” This statement includes an arithmetical error, because the period from June 2005 to January 2013 is more, not less, than seven years, but the key point is that the period is less than the required ten years.

On motion, the petitioner states: “AAO ignored numerous letters from my employees [sic], contracts showing that I am hired and showing salary. I continually worked at different non-government organization[s], [in] different parts of [the] world.”

The petitioner asserts that “bias” prevented us from recognizing contracts as evidence of employment. In our April 2014 decision, we addressed aspects of the contracts in other contexts, but we did not state that contracts were not evidence of employment. Contracts can serve as evidence of employment, but we must also consider the dates and content of those contracts.

The regulation, as worded, requires evidence of “at least ten years of full-time experience in the occupation.” The petitioner does not address our finding that “the earliest employment-related documentation in the record dates from June 2005.” The documents in question were short-term contracts that do not establish long-term employment. One contract, for example, stated: “The employment term is, commencing on June 27, 2005 and ending on July 2, 2005.” Another established a term “commencing on August 8, 2005 and ending on August 20, 2005.”

A 2008 letter from [redacted] contains the general claim that the petitioner “has been [a] collaborator” with the Foundation “since July 2004,” but this letter does not state that the collaboration entailed uninterrupted full-time employment. (Some of the petitioner’s earliest documentation refers to volunteer activities, which do not constitute

employment.) Also, July 2004 was less than ten years before the petitioner filed the petition in January 2013.

The petitioner has not overcome our finding that she documented less than ten years of experience in the occupation for which she is being sought.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.
8 C.F.R. § 204.5(k)(3)(ii)(F)

In our April 2014 decision, we stated:

The record indicates that the petitioner received a “presidential scholarship for especially talented children” at age 20, but the record does not show that the petitioner received this scholarship as recognition for achievements or significant contributions to the industry or field. Rather, the scholarship appears to have been merit-based financial aid for the petitioner’s then-ongoing studies.

On motion, the petitioner states: “AAO failed to recognize that [the] scholarship is based on ‘achievements or significant contributions to the industry or field’ and groundlessly concluded that, ‘the scholarship appears to have been merit-based financial aid for the petitioner’s then-ongoing studies.’”

The petitioner has submitted no evidence to establish that she received the scholarship as recognition for achievements or significant contributions to the industry or field. Her own assertions do not meet her burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165. The translated letter informing the petitioner of the scholarship included one sentence that described the award, stating that the petitioner “won the competition for obtaining presidential scholarship for especially talented children and youth and by order N887 dated the 24th of July 1999 of the President of Georgia [she was] awarded the presidential scholarship.” The petitioner has submitted no further information about this scholarship, and has not identified any achievement or significant contribution underlying her receipt of the scholarship.

For the reasons discussed above, the petitioner has not established that we erred in our decision regarding her claim of exceptional ability.

III. National Interest Waiver

The third and final issue concerns the question of whether the petitioner qualifies for a national interest waiver of the job offer requirement, as described in section 203(b)(2)(B)(i) of the Act.

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.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

In re New York State Dep’t of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien 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. USCIS seeks a past history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219 n.6.

The petitioner, on motion, does not directly mention the national interest waiver, but one sentence on her statement on motion could be construed as an indirect reference. She states: “Despite that many experts and employers showed [her] impact on [the] field, (e.g. [REDACTED], [REDACTED] etc[.], USCIS and AAO permanently refused to recognize this impact.”

Our April 2014 decision quoted at length from several letters in the record, including the letters from the writers named on motion. The petitioner, on motion, has not explained why our discussion of those letters, or our resulting conclusions, was deficient, and the petitioner has not shown that these letters establish her impact on the field as a whole. The petitioner offers only the summary conclusion that we should have decided differently. This argument is not an adequate basis for a motion to reconsider.

The petitioner, on motion, has not established that our decision was incorrect based on the evidence of record at the time of that decision. Therefore, the regulation at 8 C.F.R. § 103.5(a)(4) requires the dismissal of the motion.

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 is dismissed. The petition remains denied.