



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **AUG 26 2014**

OFFICE: TEXAS SERVICE CENTER

FILE [Redacted]

IN RE:

Petitioner:

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:

[Redacted]

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,


for Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. We dismissed the petitioner's appeal from that decision. The matter is now before us on a motion to reopen. We will dismiss the motion.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 26, 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 school teacher for ██████████ County Public Schools. 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 July 2, 2013, stating 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 18, 2014, stating that the petitioner had not overcome the grounds for denial.

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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner asserts on motion that our "Decision is based on erroneous conclusion of law and erroneous conclusion and/or statement of fact," and submits a brief to identify and rebut those conclusions and statements. Thus the petitioner's motion is properly classified as a motion to reconsider rather than a motion to reopen. *See* 8 C.F.R. § 103.5(a)(3). Nevertheless, the petitioner on motion does not identify any erroneous conclusion of law or fact in our April 2014 dismissal notice.

In the brief, counsel for the petitioner states:

The issue in this case is whether or not the USCIS [U.S. Citizenship and Immigration Services] has, in similar cases . . . approved NIW [national interest waiver] petitions by Highly Qualified Teachers pursuant to INA § 203(b)(2)(B)(i).

So far, undersigned counsel has been blessed with three (3) approvals for NIW Petitions by Highly Qualified Teachers. . . .

It is most respectfully manifested that all said three (3) approved NIW cases were similarly premised as [the present petition]. . . . Although, their qualifications vary from each other, it is worth noting that [the petitioner's] credentials are as competitive as [those] of the others.

The petitioner's motion includes no new evidence. The petitioner claims to have submitted copies of the approval notices, but the motion package in the record does not include those notices. Even then, those notices would establish only the outcomes of the petitions, not the evidence supporting them or the reasoning underlying their approval.

USCIS records confirm the approval of the identified petitions; however, the record of proceeding does not contain copies of the visa petitions that the petitioner claims were previously approved. It must be emphasized that each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). The brief on motion lists exhibits said to have accompanied the three approved petitions, but the petitioner did not submit copies of the exhibits themselves. Therefore, the motion does not meet the requirement at 8 C.F.R. § 103.5(a)(2) requiring the petitioner to submit evidence to support new claims of fact; it is not sufficient for the petitioner to merely describe the evidence.

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if the service center approved petitions that closely resembled the instant petition and explained the reasons for doing so, we would not be bound to follow the same course of action. Cf. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

For the above reasons, the unpublished approvals of three petitions for other beneficiaries, regarding which the petitioner has submitted no evidence, do not constitute “new facts” that would warrant reopening the proceeding under 8 C.F.R. § 103.5(a)(2). Likewise, those approvals do not constitute precedent decisions or a change in the law that would merit reconsideration of the petition under 8 C.F.R. § 103.5(a)(3). The filing does not meet the requirements of a motion to reopen or a motion to reconsider, and we will therefore dismiss the motion as required by 8 C.F.R. § 103.5(a)(4).

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *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 AAO’s April 18, 2014 decision is undisturbed.