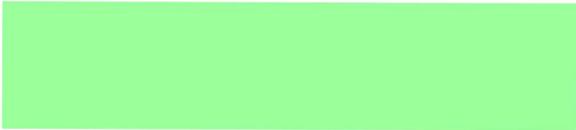


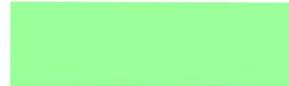


U.S. Citizenship
and Immigration
Services

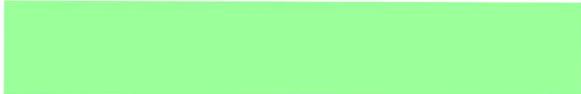
(b)(6)



DATE: DEC 29 2014 OFFICE: NEBRASKA SERVICE CENTER



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, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the matter to the Administrative Appeals Office, and we dismissed the appeal. The matter is now before us on a motion to reopen. We will grant the motion and affirm our prior decision.

The petitioner filed Form I-140, Immigrant Petition for Alien Worker, on December 17, 2012, 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 business and as a member of the professions holding an advanced degree. The petitioner seeks employment as a business development manager. 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 11, 2013, having found that the petitioner qualifies for classification as an alien of exceptional ability in business and as a member of the professions holding an advanced degree, but not for the exemption from the job offer requirement. We dismissed the petitioner's appeal on July 2, 2014, affirming the director's finding regarding the national interest waiver of the job offer requirement, and withdrawing the director's finding that the petitioner qualifies for the underlying immigrant classification. Further details regarding the proceeding appear in our July 2014 decision.

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 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).

On Form I-290B, Notice of Appeal or Motion, the petitioner indicated that her latest filing is a motion to reopen. Examination of the filing, however, indicates that it is both a motion to reopen and a motion to reconsider. The motion includes new evidence in the form of an undated letter from [REDACTED] but the motion also includes a statement from the petitioner in which she contests elements of the appellate decision. These assertions amount to a motion to reconsider, the purpose of which is to contest the correctness of the original decision based on the previously established factual record. The petitioner has not established that the decision was incorrect based on the evidence of record at the time of our initial decision, and therefore, if the petitioner had filed the motion as a motion to reconsider, we would have dismissed the motion.

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.

As noted above, the July 2014 appellate decision included three separate and independent findings, indicating that the petitioner had not established eligibility for: (1) the national interest waiver; (2) classification as an alien of exceptional ability; and (3) classification as a member of the professions holding an advanced degree. The petitioner’s motion addresses only the first of these findings.

In re New York State Dep’t of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (NYS DOT), 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.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

When she filed the petition, the petitioner stated:

My work in the field of business development [and] strategy execution provides innovative solutions for businesses to grow. Throughout my professional career, I have consistently broken new ground and outperformed my peers. In addition to that [I] have a profound expertise in the financial mechanisms and regulations of the European Union which is a very unique skills set combination virtually impossible to be replaced.

The petitioner submitted letters from individuals who had worked with her in various capacities.

In response to a June 3, 2013 request for evidence, the petitioner stated that, as a student in the Program for Leadership Development at [REDACTED] she studied under Dr. [REDACTED] [REDACTED] “the inventor of the Balanced Scorecard,” described as a “unique strategy management tool.” In our dismissal notice, we stated:

The petitioner did not claim to have developed the [Balanced Scorecard] method. An alien’s job-related training in a new method, whatever its importance, cannot be considered to be an achievement or contribution comparable to the innovation of that new method. *See NYS DOT*, 22 I&N Dec. at 221 n.7. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221. Furthermore . . . [the petitioner’s] assertions indicate that the balanced scorecard is already in widespread use in the United States.

We also noted that, while the petitioner claimed “several hundred” media stories regarding her work, she provided 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)).

The director denied the petition on October 11, 2013, stating that the petitioner had submitted insufficient evidence and information to warrant approval of the petition. The director acknowledged the intrinsic merit of the petitioner’s occupation, and found that the benefit can be national in scope, but the director concluded that the petitioner had not met the third prong of the *NYS DOT* national interest test, concerning the petitioner’s impact on her field.

On appeal, the petitioner asserted that she “completed the most prestigious program in the world for business minds with leadership potential at [REDACTED].” The petitioner stated: “My services in a highly sought-after area of business were preferred by [REDACTED] WA based US employer. I was chosen over big consulting companies because of the novelty of the approach in developing Balanced Scorecards.”

[REDACTED] president and chief executive officer of [REDACTED] stated in a letter: “The process of developing effective Balanced Scorecard has some particular steps known to evidently a very few in the consulting circles. . . . The search for a consultant took significant time.” The appeal also included a copy of a September [REDACTED] article, [REDACTED] which stated that “the balanced scorecard[] was being used in about 57 percent of international companies by 2004.”

The petitioner submitted additional letters, but we found that these materials lacked both detail and independent corroboration. We further stated:

The petitioner has identified some of the projects on which she has worked, but she has not documented the extent to which her involvement has shaped or improved the outcome of those projects. Evidence about the balanced scorecard indicates that the method is already in widespread use. Furthermore, the petitioner did not create or improve the method, and therefore evidence about the balanced scorecard is not evidence of the petitioner's impact or influence on the field. Her familiarity with the method is not, itself, evidence of eligibility for the national interest waiver.

On motion, the petitioner states:

My years of expertise and in-depth and specialized knowledge about very specific fields and industries, as well as my hands-on experience in handling strategic business issues, makes me a unique and invaluable contributor in many areas. . . .

I have repeatedly demonstrated an elite and unique proficiency when it comes to creating, crafting, and honing businesses' abilities to compete and remain viable going concerns. Dr. [REDACTED] Balanced Score Card has improved the direction of many businesses around the globe (e.g. [REDACTED] 100% revenue increase, 300% ROI, doubled sales and doubled employee engagement in the span of three years).

The petitioner does not claim to have been involved with [REDACTED]. Instead, she appears to have cited the company as an example of successful application of the Balanced Scorecard. We addressed this issue in our prior decision. Whatever the merits of the Balanced Scorecard, the petitioner is not the originator of that method. Her familiarity with a method that someone else created, and which is already in widespread use independent of the petitioner's involvement, is not grounds for a national interest waiver.

The petitioner continues:

In addition to the example provided above, my work at [REDACTED] . . . led to optimization of [REDACTED] business processes which resulted in consecutive 25% operational cost savings in a mere ten months after project implementation. The most dramatic change was the addition of twenty new employees hired at the company for the same time frame. . . . The processes we developed positioned [REDACTED] to become a third party benefits administrator with influence national in scope which, given Health Care reform, has fast-tracked [REDACTED] for national expansion.

My approach is very specific and tailored strictly to my clients' needs; it combines the methods of Professor [REDACTED] with the most recent revolutionary method of [REDACTED] Professor [REDACTED] . . . This combined approach has never been implemented before and I pride myself in inventing and being the first to implement it!

The petitioner's motion includes a second copy of [REDACTED] previously submitted letter, which does not include any of the information quoted above and therefore does not substantiate the petitioner's claims on motion. The petitioner's unsupported claims cannot meet her burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165.

The other submitted letter is new to the record. [REDACTED] is chair and co-founder of [REDACTED] a "charity initiative founded by [REDACTED] alumni passionate about making a difference and enabling underprivileged people in our society." Mr. [REDACTED] stated:

[The petitioner] worked with the team following the Balanced Scorecard approach to help us establish our mission, vision, values and basically our identity. With her help we were able to move on much faster, pinpoint the partnering entities, set up goals and leverage the talent in the team.

I can see how her unique approach creatively combining the Balanced Scorecard and the [REDACTED] principles for accelerating accountability within the teams can benefit many businesses on a large and smaller scale across [the] U.S.

The petitioner claims on motion that she was the first to incorporate "the [REDACTED] principles" into the Balanced Scorecard, but the record includes no evidence to show that she was in fact the first to do so, or to establish that this combination has had a significant impact on the field of business development management. The petitioner has identified one more project in which she has participated, but has not shown the significance of this project. Mr. [REDACTED] new letter is consistent with other evidence in the record, indicating that the petitioner is chiefly known among alumni of the Program for Leadership Development at [REDACTED]. We previously found that the petitioner has not established eligibility for the national interest waiver. The petitioner, on motion, has not overcome this finding. We will, therefore, affirm that finding.

The petitioner, on motion, does not address, rebut, or overcome our finding that she has not established eligibility for the underlying immigrant classification. Rather, in her statement on motion, she refers to herself "[a]s a holder of an advanced degree, and an alien of exceptional ability," without acknowledging our contrary finding which took up three pages of the appellate decision. Therefore, our prior finding stands undisturbed; we will not repeat the discussion of the issue here.

We will affirm the dismissal of the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 AAO's decision of July 2, 2014 is affirmed. The petition remains denied.