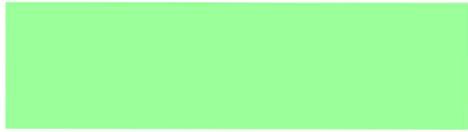




U.S. Citizenship
and Immigration
Services

(b)(6)



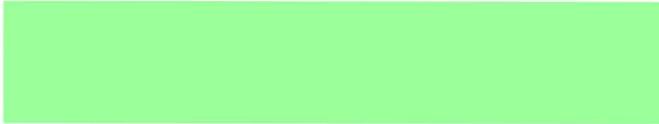
DATE: Office: TEXAS SERVICE CENTER FILE: 

SEP 26 2014

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:



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 immigrant visa petition. The Administrative Appeals Office dismissed a subsequent appeal. The matter is now before us on motion to reopen. We will dismiss the motion pursuant to 8 C.F.R. § 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), and 103.5(a)(4).

The petitioner seeks 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. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks employment as a pre-kindergarten teacher. 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 has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that she 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 she 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.

In the February 26, 2014 decision dismissing the petitioner's appeal, we upheld the director's determination that the petitioner had failed to establish eligibility for the national interest waiver. The petitioner's evidence was not sufficient to demonstrate that she meets the second and third requirements specified in *NYSDOT*.

In order to properly file a motion to reopen, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the petitioner must file the motion within 30 days of the decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The regulation at 8 C.F.R. § 1.2 explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. The date of filing is not the date of submission, but the date of actual receipt with the proper signature and the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

On motion, the petitioner states: "We humbly request the Immigration Service for permission to submit this I-290B Packet which is 2-day delayed due unintentionally to transmission of [the petitioner's] [REDACTED] (kindly see enclosed her email to undersigned attorney sent 31 March 2014, 7:53PM)." The petitioner submitted a March 31, 2014 e-mail from her to counsel stating: "Good evening Atty [REDACTED] Attached is the letter regarding the Haiyan Typhoon." The petitioner's letter, dated March 28, 2014, describes the impact of the November 2013 typhoon on her relatives in the Philippines, comments on the petitioner's teaching career and contributions to her schools, and requests approval of her application for permanent residence.

The record indicates that we issued our decision dismissing the petitioner's appeal on February 26, 2014. We properly gave notice to the petitioner that she had 33 days to file a motion. The Form I-290B, Notice of Appeal or Motion, was received by U.S. Citizenship and Immigration Services (USCIS) on April 2, 2014, or 35 days after the decision was issued. Accordingly, the motion was untimely filed.

Although the petitioner has relatives in the Philippines, there is no documentary evidence showing that she was residing there when Typhoon Haiyan struck in November 2013. The submitted documentation indicates that the petitioner last entered the United States on January 24, 2007, and has resided in Maryland since that time. The petitioner was employed by [REDACTED] County Public Schools from February 2007 – June 2012, and has worked at [REDACTED] in Washington, D.C. since the fall semester of 2012.

As it relates to motions to reopen, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that “failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.” As the petitioner was residing in Maryland at the time, and Typhoon Haiyan occurred more than three months before our February 26, 2014 decision was issued, she has not shown that the delay in filing her motion was attributable to the typhoon's impact. In this matter, the petitioner's motion was not properly filed within the required thirty days and she has not demonstrated that this delay was reasonable and beyond her control. The motion must therefore be dismissed as untimely filed. In addition, the instant motion does not contain the statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding as required by the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C).

Even if we were to grant the petitioner's motion to reopen, our previous findings would be affirmed. In our decision dismissing the petitioner's appeal, we determined the petitioner had failed to establish that the benefits of her work as a teacher would be national in scope and that she would benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a “heavy burden.” *INS v. Abudu*, 485 U.S. at 110.

The petitioner's motion includes photographs of damage to her Filipino relatives' property; wire transfers from September 2007 through December 2013 indicating that the petitioner provides financial support to relatives in the Philippines; a March 20, 2014 letter from the petitioner describing her teaching career and contributions to her schools; two award certificates from the principal at [REDACTED] and three letters of support from colleagues commenting on the

petitioner's work at their school. The preceding documentation, however, does not show that the petitioner's work as a teacher is national in scope and that her work has influenced the field as a whole.

In addition, the petitioner submitted 2013-2014 test results for students at [REDACTED] that postdate the filing of the petition on June 28, 2012. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, the submitted test results from 2013-2014 cannot be considered as evidence to establish the petitioner's eligibility at the time of filing.

In the brief submitted on motion, the petitioner points to three teachers who received national interest waivers, and requests that her petition be treated in the "same light." 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 the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished service center decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c). Furthermore, the petitioner has provided no documentary evidence to establish that the facts of the instant petition are similar to those in the unpublished decisions. Without such evidence, the assertion that the cases merit the same outcome is unwarranted.

The petitioner has not submitted evidence showing that the work she was engaged in or had completed at the time of filing on June 28, 2012 had benefits that were national in scope. In addition, the petitioner has failed to demonstrate that her work had already influenced the field as a whole at the time of filing or even as of the date the petitioner filed the current motion. Accordingly, the petitioner's motion does not overcome the grounds underlying our previous findings.

The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decision will not be disturbed.

ORDER: The motion to reopen is dismissed, our February 26, 2014 decision is affirmed, and the petition remains denied.