



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 27740624

Date: AUG. 09, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a human resources specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that she qualifies as a member of the professions holding an advanced degree. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests our dismissal of the appeal based on a conclusion that the Petitioner had not demonstrated her eligibility for the EB-2 classification. In support of the motion, the Petitioner submits a brief and documentation previously included in the record. The Petitioner asserts that we erred in our interpretation of evidence submitted to demonstrate that she had at least five years of employment experience in the field of human resources following her attainment of the foreign equivalent of a bachelor's degree in psychology.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

To demonstrate her post-baccalaureate employment experience, the Petitioner submitted letters from previous employers and from a business acquaintance with whom she worked during her employment with [redacted] in the position of Human Resources Director. In this latter letter, the author states that he was the owner and chief executive officer of [redacted] a company that was the main supplier for [redacted] during the Petitioner's employment with the company. The author provides the following:

In my capacity as Owner and CEO of [redacted] I had the pleasure to work and collaborate with [the Petitioner] from 2012 to 2016 while she was the Human Resources Director for [redacted] [The Petitioner] was fundamental in managing and recruiting [redacted] external workforce, including supply chain professionals and freelancers increasing communication between management and suppliers and creating long-standing relationships with suppliers.

[The Petitioner] and I worked together to understand the products I had to deliver, our mutual obligations under the contract, product specification, closing orders, and monitoring deliveries and payments.

In dismissing the Petitioner's appeal, we first noted that the probative value of this letter was reduced because it was not from a former employer. See 8 C.F.R. § 204.5(g)(1). We determined that the letter's description of the Petitioner's job duties did not match other descriptions in the record for human resource specialists. As an example, the O\*Net Online report for the position listed duties including interpreting and explaining human resources rules and policies, hiring employees, preparing employment records relating to leave, promotions, and other events, and addressing employee concerns. We noted that the Petitioner's resume lists the entirety of her duties while employed at [redacted] as follows: "Plan, direct, or coordinate human resources activities and staff of an organization." Because the duties described in the letter from [redacted] differ significantly from those described elsewhere in the record, we determined that the Petitioner had not established that she was performing a human resources role during her employment with [redacted] See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (a petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies).

We explained that, rather than supporting the Petitioner's assertions that she was employed by [redacted] in a human resources role, the [redacted] letter "indicates that, despite using the title of human resources director, the Petitioner's role with the company was comprised of duties unrelated to human resources functions." As such, the record did not contain sufficient evidence to establish that she had at least five years of post-baccalaureate experience in human resources. We concluded that the Petitioner did not demonstrate that she was eligible for the EB-2 classification as a member of the professions holding an advanced degree.

On motion, the Petitioner asserts that we relied too heavily on the O\*Net description of human resources specialists and ignored the Petitioner's personal statement concerning her employment with [REDACTED] which provides the following:

In this position, I collaborated with upper management to understand the company's goals and establish the strategy related to staffing, recruiting, and retaining employees, ensuring compliance with the company's business objectives; planned, led, developed, and coordinated training and initiatives to motivate the sales team to increase the company's results, and served as a link between management and employees, guaranteeing all employment relations ran smoothly to achieve the company's organizational goals. I oversaw a total of 15...employees. I was also responsible for managing human resources and business processes within the company, assisting management by providing HR advice to achieve sales targets, financial control, logistics, bonuses, and sales awards for employee recognition.... During my tenure at [REDACTED] I promptly became so involved in business and managerial decisions on behalf of the company that I decided to pursue post-graduate studies in Strategic Management...which helped me understand modern management concepts from an integrated strategic vision, applying methods, techniques, and tools for organizations in competitive markets.

Apart from the Petitioner's own description, there is no documentation within the record from a source with direct knowledge of the Petitioner's performance of job duties in the field of human resources while employed at [REDACTED]. The author of the letter who worked as a supplier for [REDACTED] described duties that appear to relate to a coordination role that was closely involved in the transactions of the business itself, rather than the management of internal issues related to the employees of the company. We note that the author appears to have knowledge of the Petitioner's duties that is limited to his own professional interactions with her; the letter is not only bereft of any reference to duties related to human resources, but it does not originate from a source that had knowledge of the Petitioner's daily work experience with [REDACTED]. The Petitioner's own personal statement says that she "promptly became so involved in the business and managerial decisions" at [REDACTED] that she pursued additional education in business management; this indicates that her role at [REDACTED] was not focused on a specialization in human resources, but a different type of involvement in running the business itself. While the Petitioner contends, on motion, that her role as a director of human resources would have encompassed much more than that of a specialist, as described by the O\*Net report, this explanation does not resolve the discrepancies in the record regarding what her role at [REDACTED] actually entailed. The record does not establish that the Petitioner performed duties in the field of human resources during her employment with [REDACTED]. As such her time at the company cannot count towards post-baccalaureate experience in the specialty. The Petitioner has not sufficiently demonstrated that she holds an advanced degree through attainment of a bachelor's degree and at least five years of experience in the field of human resources.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion to reconsider is dismissed.