U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26903062

Date: JUL. 24, 2023

Motions on Administrative Appeals Office Decision

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

The Petitioner owns an online mathematics tutoring business. She requests classification under the employment-based, second-preference ("EB-2") immigrant visa category as a member of the professions holding an advanced degree and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers - and the related requirements for U.S. Department of Labor certifications - if petitioners demonstrate that waivers would be "in the national interest." *Id.*

After initially granting the filing, the Director of the Nebraska Service Center revoked the petition's approval. The Director concluded that the Petitioner demonstrated neither her qualifications for the EB-2 immigrant visa category nor the merits of a national interest waiver. Agreeing that the Petitioner did not establish herself as an advanced degree professional and reserving consideration of the waiver's denial, we affirmed the petition's revocation on appeal. *In Re: 22755884* (AAO Nov. 18, 2022).

The matter returns to us on the Petitioner's combined motions to reopen and reconsider. She submits amended English translations of her Russian university documents and an additional statement from an educational evaluator, contending that the new evidence establishes her possession of an advanced degree.

In these revocation proceedings, the Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). Upon review, we conclude that the motion to reconsider does not meet regulatory requirements. And, although the motion to reopen establishes the Petitioner's qualifications as an advanced degree professional, she has not demonstrated her eligibility for a national interest waiver. We will therefore dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate that our prior decision misapplied law or USCIS

policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that meet these criteria and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. The Motion to Reconsider

The Petitioner does not allege that our prior decision misapplied law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3) ("Requirements for motion to reconsider"). Rather, she claims eligibility for the requested immigrant visa category based on new evidence. As the motion to reconsider does not meet applicable requirements, we must dismiss it. *See* 8 C.F.R. § 103.5(a)(4).

B. The Motion to Reopen

An advanced degree professional must have an "advanced degree." Section 203(b)(2)(A) of the Act. An advanced degree may include "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." 8 C.F.R. § 204.5(k)(2). On motion, the Petitioner contends that her new evidence demonstrates the equivalency of her Russian economics degree, with a specialization in taxes and taxation, to a U.S. master's degree.

Specifically, the Petitioner asserts her receipt of a five-year *diplom spetsialista* ("specialist diploma"). The Electronic Database for Global Education (EDGE), an online resource that U.S. courts have found to be a reliable source of foreign educational equivalencies, indicates that a five-year *diplom spetsialista* equates to a U.S. master's degree.[1] The Petitioner previously submitted an independent, professional evaluation of her foreign degree. Citing EDGE, the evaluation finds that her five-year credential equates to a U.S. master's degree.

In our prior decision, we found the evidence insufficient to demonstrate the Petitioner's possession of the equivalent of a U.S. master's degree. We doubted the equivalency because the diploma and the evaluation do not expressly identify the credential as a *diplom spetsialista*. The diploma's English translation also described the credential as a "diploma of *undergraduate* education," suggesting her lack of master's-level coursework. (emphasis added). Further, we noted that a copy of an apparent transcript from her university omitted her name and did not indicate her completion of a degree program. We therefore concluded that the Petitioner did not demonstrate the equivalency of her foreign credential to a U.S. master's degree.

Upon review, however, we realize that we misidentified the Petitioner's diploma. In its overview of the Russian educational system, EDGE states that addenda accompany university diplomas. According to EDGE, diploma addenda provide "details of the student's enrollment and list subjects with grades and the number of hours per subject." Thus, what we identified as the Petitioner's diploma is actually the diploma's addendum. The addendum indicates its issuance on February 6, 2009 and

[1] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), a non-profit, voluntary association of more than 11,000 higher education professionals representing about 2,600 institutions in more than 40 countries. *See* AACRAO, "Who We Are," https://www.aacrao.org/who-we-are; *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

includes what we identified as a transcript as its second page. The record contains a separate copy of the Petitioner's diploma, which indicates its issuance on January 28, 2009.

Also, additional information in EDGE supports the Petitioner's receipt of the claimed five-year specialist diploma. When describing a *diplom spetsialista*, EDGE's Russian overview states "that the terminology 'specialist diploma' is colloquial, and that the word 'specialist' does not appear on the documents." EDGE also identifies a *diplom spetsialista* as the only Russian university degree with a five-year course of study.

Unlike the prior English translation of the diploma's addendum, the amended translation does not describe the Petitioner's credential as a "diploma of undergraduate education." The amended translation of her diploma does not include any other material changes. Similar to the additional EDGE information, the educational evaluator's additional statement indicates that the Petitioner's credential does not refer to itself as a *diplom spetsialista*. The evaluator states: "This specific diploma, at the time of study, was only entitled 'diploma.'"

Even considering the doubt about the Petitioner's claimed graduate-level coursework from the original translation of the diploma's addendum, a preponderance of the evidence demonstrates her receipt of the claimed *diplom spetsialista*. The additional EDGE information and the evaluator's additional statement indicate that we erred in expecting her educational evidence to specifically describe her credential as a *diplom spetsialista*. EDGE also indicates that she must have received a *diploma spetsialista*, as it is the only five-year degree that Russian universities offer.

The Petitioner has demonstrated her possession of a *diplom spetsialista* equating to a U.S. master's degree. Thus, she qualifies for the requested immigrant visa category as an advanced degree professional. We will therefore withdraw our prior contrary finding.

C. Substantial Merit

The motion to reopen demonstrates the Petitioner's qualifications for the requested immigrant visa category. We must now review the issues we reserved on appeal and consider whether a waiver of the job-offer/labor-certification requirements would be "in the national interest."

Neither the Act nor regulations define the term "national interest." So, we have established a framework for adjudicating such waiver requests. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016). If otherwise qualified as an advanced degree professional or noncitizen of exceptional ability, a petitioner may merit a waiver of the job-offer/labor-certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well-positioned" to advance their intended endeavor; and
- On balance, a waiver of the job-offer/labor-certification requirements would benefit the United States.

Id.

The Petitioner proposes to provide online, math-tutoring services to children ages 3 to 8. In 2019, she established her own U.S. limited liability company for this purpose and proposes to provide both individual and group lessons. She estimates that, by its fifth year of operation, her business would generate total sales of $905,191, employ four in-house workers, and contract the services of 15 teachers.

To demonstrate substantial merit, a petitioner may provide evidence that their endeavor would potentially have a significant positive economic impact in the United States. *Matter of Dhanasar,* 26 I&N Dec. at 889. But, even without potential economic benefits, an endeavor may have substantial merit if it would further knowledge in a field. *Id.*

We agree with the Director that the Petitioner demonstrated the substantial merit of her proposed endeavor. The record shows that, besides providing potential economic benefits, her math-tutoring business would support U.S. educational interests. The Petitioner provided evidence that the country has a shortage of experienced math teachers and that U.S. students' skills in the subject are important to maintain the country's competitiveness in scientific and technological industries. *See Matter of Dhanasar*, 26 I&N Dec. at 893 (finding that "STEM [science, technology, engineering, and math] teaching has substantial merit in relation to U.S. educational interests").

D. National Importance

A petitioner may demonstrate the "national importance" of their proposed endeavor by showing that it would generate significant economic benefits or advancements in a field. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Matter of Dhanasar*, 26 I&N Dec. at 889. When assessing national importance, USCIS does not require a national geographical scope. "An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

The Petitioner contends that her endeavor has national importance because it will improve U.S. math education, employ U.S. workers, generate a positive economic impact, and improve the welfare of U.S. students academically and socially.

We agree that math tutoring has merit. But, when considering national importance, USCIS does not focus on the significance of a petitioner's field, industry, or profession. Rather, the Agency must examine "the specific endeavor that the foreign national proposes to undertake" and its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner has not demonstrated that her specific endeavor would have a broad enough impact to achieve national importance. She has not explained the national implications of her company's projected levels of revenue and workers. Also, the record does not demonstrate that her business would benefit an economically depressed area. *See id.* at 890.

Further, the Petitioner has not established that her business would teach math to a nationally important number of U.S. children. We acknowledge that kids and parents from all over the country could access her online business. But her business plan indicates that the company, at least through its initial

five years of operation, would tutor only a tiny fraction of U.S. children between the ages of 3 and 8. Also, the Petitioner does not claim that her activities would significantly advance the fields of math or math education. As in *Dhanasar*, where the petitioner similarly proposed to support teaching activities in the STEM disciplines, "the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." *Matter of Dhanasar*, 26 I&N Dec. at 893.

The Petitioner has not sufficiently demonstrated that her proposed math-tutoring business would have national importance. We will therefore dismiss the motion to reopen and affirm the petition's denial.

Our national importance determination resolves the motion to reopen. Thus, we decline to reach and hereby reserve the Petitioner's prior arguments regarding her qualifications for the other national interest waiver requirements in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues that are unnecessary to the ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant was otherwise ineligible for the requested benefit).

III. CONCLUSION

The motion to reconsider does not demonstrate our misapplication of law or USCIS policy. The motion to reopen establishes the Petitioner's qualifications as an advanced degree professional. But the filing does not demonstrate that her venture has national importance.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.