



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

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

In Re: 28153004

Date: AUG. 4, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an education specialist, filed Form I-140, Immigrant Petition for Alien Worker, seeking 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 sought 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. U.S. Citizenship and Immigration Services 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 approved the petition but then revoked that approval, concluding that the Petitioner did not establish eligibility for the national interest waiver. The Director also found that the Petitioner had willfully misrepresented material facts. *See* section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). We dismissed a subsequent appeal and two motions. The matter is now before us on a motion to reopen.

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 and withdraw the finding of willful misrepresentation of a material fact.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner does not contest the revocation on the merits related to the National Interest Waiver. In an earlier filing, the Petitioner stated that she “accepts that she is not eligible for a National Interest Waiver.” Her latest motion is limited to disputing the finding of willful misrepresentation. The Petitioner asserts that the evidence submitted on motion establishes that the finding of willful misrepresentation resulted from the negligence of the agency that prepared and filed the petition on her behalf, rather than any misrepresentation by the Petitioner herself.

In re-examining the issues raised by the Petitioner on motion, we have determined that perceived discrepancies and contradictions do not rise to the level of willful misrepresentation. Many of these issues arose, instead, from ambiguities or gaps in the record.

The materials submitted on motion corroborate the Petitioner's assertion that the finding of willful misrepresentation arose not from her actions, but from those of the petition's preparer. In dismissing one of the Petitioner's earlier motions, we stated that the Petitioner's assertions regarding the preparer were not consistent with the Petitioner's arguments on appeal. But in doing so, we did not take into account that the same preparer had also prepared the appeal.

The finding of willful misrepresentation of a material fact is withdrawn.

The Petitioner does not argue that she is eligible for the immigration benefit that formed the basis of the underlying petition. For this reason, the revocation still stands, and we will dismiss the motion.

ORDER: The motion to reopen is dismissed.