



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

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

In Re: 27988065

Date: AUG. 22, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an electrical engineer, seeks classification as a member of the professions holding an advanced degree. 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. 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.¹

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualifies as an advanced degree professional, the Petitioner did not establish that a waiver of the job offer requirement is in the national interest. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.²

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.

¹ While neither statute nor the pertinent regulations define the term “national interest,” *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions and states that USCIS may, as a matter of discretion, grant a petition if the petitioner demonstrates that: the proposed endeavor has both substantial merit and national importance; the individual is well-positioned to advance their proposed endeavor; and, on balance, waiving the job offer requirement would benefit the United States.

² In a statement submitted in support of the instant motion, the Petitioner briefly refers to the instant motion as a “motion to reopen and reconsider.” However, the substance of the statement discusses only the claimed basis for reconsideration. Additionally, on the Petitioner’s Form I-290B, Notice of Appeal or Motion, the Petitioner selected only “I am filing a motion to reconsider” and not “I am filing a motion to reopen and a motion to reconsider.” Finally, the Petitioner did not state new facts nor submit documentary evidence in support of the motion, as required of a motion to reopen. 8 C.F.R. § 103.5(a)(2). As such, we will treat the Petitioner’s motion as only a motion to reconsider.

In our prior decision, incorporated here by reference, we determined that the Petitioner did not provide consistent information regarding his proposed endeavor. The Petitioner's initial filing described his general intent to continue working in the field of electrical engineering. However, in response to the Director's notice of intent to deny (NOID), the Petitioner proposed to establish a company that would provide a range of engineering services. We dismissed the appeal because we concluded that without providing consistent information as to the proposed endeavor, the Petitioner had not established the endeavor's national importance, and consequently, could not demonstrate eligibility under the first prong of the *Dhanasar* framework, as required. Moreover, we noted that although this lack of clarity in the proposed endeavor was also the stated basis for the Director's denial, the Petitioner did not provide clarification as to his proposed endeavor on appeal or even address this finding by the Director.

On motion, the Petitioner requests we reconsider our prior decision. In support of the motion, the Petitioner submits a brief statement in which he broadly asserts that USCIS did not "give due regard" to the evidence in the record. The Petitioner states that the Director's denial was therefore "contrary to law or policy, and unsupported by the evidence of record." However, the Petitioner makes only this general assertion in a conclusive manner that the denial was improper, without identifying any specific law or policy that was incorrectly applied to any specific evidence in the record.³ Moreover, the only decision properly before us on motion is our March 2023 appellate decision, not the Director's July 2022 denial of the petition. The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). But the Petitioner does not discuss our decision to dismiss his appeal, nor identify any incorrect application of law or policy in that decision, nor specify how we erred in dismissing his appeal based on the evidence before us at the time of the decision. 8 C.F.R. § 103.5(a)(3).

As the Petitioner has not established that our previous decision was based on an incorrect application of law or policy, or that it was incorrect based on the evidence then before us, he has not met the requirements for a motion to reconsider. 8 C.F.R. § 103.5(a)(3). Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.

³ The only specific law or policy cited by the Petitioner on motion is his claim that the Director did not properly analyze the documents in the record, thus "violating the Fourth Amendment of the Constitution of the United States of America as Petitioner provided timely and proper notice of his RFE response to USCIS." The Fourth Amendment to the United States Constitution prohibits "unreasonable searches and seizures" and requires probable cause in the issuance of warrants. U.S. Const. amend. IV. The Petitioner does not explain how the Fourth Amendment is implicated in the instant matter nor how the Director violated it with the denial of the petition.