



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

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

In Re: 29259269

Date: DEC. 20, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a director of sports and education, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest.

The Acting Director denied the petition on January 4, 2023. The Petitioner filed his appeal on February 7, 2023. The Petitioner checked a box on Form I-290B, Notice of Appeal or Motion, stating, "My brief and/or additional evidence is attached." The evidence submitted with the Form I-290B was as follows:

- A letter from the Petitioner dated February 2, 2023, stating "This authorization for credit card transactions – Form G-1450 is to pay the USCIS fee of \$675.00 I've sent in another USPS Mail."
- A receipt from the U.S. Postal Service in Orlando, Florida, dated February 4, 2023, demonstrating that an envelope was sent priority mail to Chicago, Illinois with postage of \$9.65, with delivery scheduled on February 7, 2023.
- A copy of the Acting Director's decision.

We summarily dismissed the appeal on June 5, 2023, stating, "no brief or additional evidence was received by our office." The matter is now before us on the Petitioner's combined motions to reopen and reconsider. On motion, the Petitioner states that he submitted all evidence to the U.S. Citizenship and Immigration Services (USCIS) Chicago Lockbox on February 2, 2023. He submits a copy of the additional evidence he asserts that he previously submitted with the combined motions.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. §

103.5(a)(1)(i) limits our authority to reopen to instances where the filing party has shown “proper cause” for that action. Thus, to merit reopening, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

A motion to reconsider must establish that our 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).

On motion, the Petitioner explains that he received Form I-797C, Notice of Action, dated February 9, 2023, confirming USCIS receipt of his Form I-290B with receipt number [redacted] on February 7, 2023. He further states that USCIS issued a second Form I-797C dated February 14, 2023, with receipt number [redacted] rejecting his Form I-290B. The Petitioner submits a copy of a letter he addressed to the USCIS Chicago Lockbox dated February 22, 2023, referencing the rejection notice, stating:

I’ve sent two different packages through USPS (both tracking numbers attached). The first one with some new documentation, the I-290B Notice of Appeal or Motion, G-1450 Authorization for Credit Card Transaction. The USCIS Chicago already accepted, charged \$675.00 and sent to me receipt (Number [redacted]). The second one with all the documentation the USCIS sent me back on Feb 14, 2023.

The Petitioner maintains that he submitted additional evidence in support of his appeal along with correspondence to USCIS dated February 2, 2023. The record includes two letters to USCIS from the Petitioner dated February 2, 2023. One letter was received with Form I-290B, as noted above, and states “I’ve sent in another USPS Mail.” A second letter dated February 2, 2023, states “I really thank you to have the opportunity to present all new evidences [sic] (attached).”¹ The second letter appears to have been returned to the Petitioner, and nothing shows that he resubmitted the returned additional evidence.

The Petitioner indicated on Form I-290B that his additional evidence was attached to the form. However, based on the Petitioner’s statement that he sent two separate packages to USCIS, it appears that the Petitioner may have submitted his additional evidence separately from the Form I-290B, which appears to have been “rejected” since it was not submitted directly with the Form I-290B.²

The regulations require an affected party to submit the complete appeal including any supporting brief or evidence as indicated in the applicable form instructions within 30 days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). The record reflects that the Petitioner filed his Form I-290B and filing fee at the location designated by the form instructions and indicated that his additional evidence was

¹ The envelope for the Petitioner’s appeal demonstrates that USPS accepted the Petitioner’s mailing on February 6, 2023, with postage of \$28.75, and the envelope was delivered to the USCIS Chicago Lockbox on February 7, 2023. The USPS receipt submitted with the appeal, however, does not list the name of the sender or the delivery address and is for a different date and postage amount, indicating it references a different mailing than the appeal.

² Although the Petitioner references having sent tracking numbers for both packages, the record does not include delivery confirmation matching the tracking number on the USPS receipt.

attached, however, the Petitioner admits that he sent additional evidence separately despite this selected notation.

The form instructions to the Form I-290B instruct appellants that, if all evidence is not submitted, USCIS may dismiss the appeal. The instructions further instruct appellants who elect to submit a supplemental brief within 30 days of filing an appeal to mail the brief or additional evidence directly to the AAO. In this instance, the Petitioner did not submit his additional evidence in the same mailing as the Form I-290B. Even if the Petitioner had indicated on the Form I-290B that he would submit his additional evidence within 30 calendar days, he mailed the evidence to the USCIS Chicago Lockbox rather than to the AAO, as the form instructions state.

The record before us at the time we summarily dismissed the Petitioner's initial appeal in June 2023 did not contain a brief or other statement specifically identifying an erroneous conclusion of law or statement of fact in the decision being appealed. Therefore, there was no error in summarily dismissing the appeal. While the new evidence submitted in support of this motion includes a copy of the additional evidence the Petitioner asserts that he initially submitted, the Petitioner has neither claimed nor presented evidence that the evidence was properly submitted in accordance with the form instructions as required by 8 C.F.R. § 103.3(a)(2)(i).

For the reasons discussed above, the Petitioner has not shown proper cause for reopening the proceedings or reconsideration of our prior decision. Therefore, the Petitioner has not established eligibility for the benefit sought.³

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

³ Even if we had considered the Petitioner's additional evidence, we still would have dismissed these combined motions. The Acting Director concluded that the Petitioner did not establish all three of the prongs in the framework for adjudicating national interest waiver petitions set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Specifically, the Director concluded that the Petitioner did not establish that his proposed endeavor has substantial merit or is of national importance, that he is well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. With the motion the Petitioner addresses only the second *Dhanasar* prong. The Petitioner's evidence includes a cover page titled "Prong II Well Positioned to Advance the Proposed Endeavor" and includes evidence already submitted in response to the Director's Notice of Intent to Deny. The Petitioner's evidence does not address all of the deficiencies outlined in the Acting Director's denial, including one and three of the *Dhanasar* prongs.