



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

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

In Re: 24782976

Date: FEB. 2, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an education specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center revoked the approval of the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. In addition, the Director determined that the Petitioner willfully misrepresented material facts in support of her petition. We dismissed her appeal and subsequent combined motion to reopen and motion to reconsider. The matter is before us again 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.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits U.S. Citizenship and Immigration Services' (USCIS) authority to reopen to instances where an applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant must not only meet the formal filing requirements at 8 C.F.R. § 103.5(a)(1)(iii) (such as submission of a properly completed and signed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. Specifically, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2).

At the outset, the Petitioner concedes that she is not eligible for a national interest waiver and filed this motion to reopen for the purpose of disputing the willful material misrepresentation determination. Accordingly, our decision will be limited to only addressing the willful material misrepresentation issue.

In summarizing our most recent decision dismissing her motion to reconsider, we determined that the Petitioner did not show that our prior decision dismissing her appeal contained errors of law or policy,

or that the decision was incorrect based on the record at the time of the decision. As such, the Petitioner did not demonstrate that she met the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3). As it relates to our decision dismissing her motion to reopen, we concluded that our previous decision thoroughly examined the record and provided explanations of why her evidence did not overcome the Director's findings. Although the Petitioner provided documents that purport to clarify her professional work history and experience, as well as explain the misrepresentation, the Petitioner previously had ample opportunity to correct any deficiencies in the record by her response to the notice of intent to revoke (NOIR) and on appeal. The Petitioner elected not to address the Director's concerns about misrepresentation in her NOIR response. The motion evidence she submitted in attempt to cure the deficiencies could not be considered new, as it involved matters already considered and adjudicated. Accordingly, the Petitioner did show proper cause for reopening the proceedings under 8 C.F.R. § 103.5(a)(2).

In the current motion to reopen, the Petitioner continues to assert that her misrepresentations were "due to precisely the wrong help" and submits "emails, text messages . . . , and certified transcripts of two phone calls." The issue here is whether the Petitioner has submitted new facts, supported by documentary evidence, to warrant reopening. And the matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision; the dismissal of the motion to reconsider and the motion to reopen. General support that a motion must first overcome the most recent decision lies within the regulation at 8 C.F.R. § 103.5(a)(1)–(3) where it repeatedly discusses the underlying or latest decision, it limits the time one has to file a motion after the most recent decision, and it references jurisdiction resting with the entity who made the latest decision. This demonstrates that any motion must first address and overcome the most recent adverse decision before the filing party's arguments may move on to any issue that arose in a previous petition, appeal, or motion filing.

In this case, the Petitioner has not provided new facts in order to warrant reopening. Instead, the Petitioner makes the same assertions that she made when she filed her previous combined motion filing. Specifically, the Petitioner continues to claim that the agency who assisted her with the petition made the inconsistencies and misrepresentations in her documents. Because the Petitioner raised these claims, which we thoroughly addressed, in her previous combined motion, these same arguments do not constitute new facts as required under 8 C.F.R. § 103.5(a)(2), regardless of the submission of additional evidence.<sup>1</sup>

### III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause to reopen this proceeding. Therefore, the motion to reopen will be dismissed for the above stated reasons.

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

---

<sup>1</sup> Again, the Petitioner had opportunities to make these arguments and submit the evidence in response to the Director's NOIR and on appeal.