



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

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

In Re: 23888336

Date: JAN. 3, 2023

**Motion on Administrative Appeals Office Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner 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 denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but 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. We dismissed the Petitioner's subsequent appeal and motion to reconsider. The matter is before us again on motion to reopen.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen.

**I. LAW**

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

**II. ANALYSIS**

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Accordingly, we examine any new facts to the extent that they pertain to our prior dismissal of the Petitioner's motion to reconsider.

First, we dismissed the Petitioner's appeal, which was physically filed, because the signature on it was created by a word processor or other electronic format but the regulations and form instructions specifically disallow the submission of a Form I-290B signed in an electronic format except when it is filed electronically. *See* 8 C.F.R. § 103.2(a)(2); *see also* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations requiring its submission); 8 C.F.R. § 103.3(a)(2)(i) (requiring affected parties to submit an appeal on Form I-290B).

Next, we dismissed the Petitioner's subsequent motion to reconsider because the Petitioner acknowledged that the appeal was signed by a word processor and, therefore, it did not meet the signature requirement. Accordingly, the Petitioner's motion to reconsider did not establish that our prior decision on the appeal was based on an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3) (providing that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy).

In support of the motion to reopen, the Petitioner asserts, in relevant part, that the signature on the appeal "was created by a word processor, and is not a handwritten mark" and that "because this is not a case of inappropriate application of the law as stipulated at 8 C.F.R. § 103.5, and so the wrong category of appeal of motion [*sic*] was submitted. I had erroneously submitted a motion to reconsider." The Petitioner further asserts, "In the light of this, I am submitting a new [F]orm I-290B that has been filled and signed in handwritten black ink as set forth in the instructions section of the [F]orm I-290B."

As noted above, the scope of review for a motion to reopen is limited to the prior decision. 8 C.F.R. § 103.5(a)(1)(i). The Petitioner asserts on motion to reopen that he "had erroneously submitted a motion to reconsider," not that we erred by dismissing it. We further note that the Petitioner reiterates on motion to reopen that the underlying appeal contained an improper signature; therefore, we properly dismissed it.

The Petitioner does not otherwise submit a new fact on motion to reopen, supported by documentary evidence that may establish eligibility, that addresses whether we erred by dismissing the prior motion to reconsider. Because the Petitioner does not offer any new facts supported by documentary evidence on motion to reopen that may establish eligibility and, furthermore, because the Petitioner asserts that he "had erroneously submitted a motion to reconsider" rather than that we may have erred in dismissing the motion to reconsider, we will dismiss the motion to reopen.

### III. CONCLUSION

The Petitioner has not offered new facts supported by documentary evidence on motion demonstrating that we erred in the underlying decision. The Petitioner's underlying petition remains denied.

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