



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

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

In Re: 27856178

Date: JUL. 31, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a teacher, seeks employment-based second preference (EB-2) 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 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 while the Petitioner did show that she was eligible for the EB-2 classification as a member of the professions holding an advanced degree, she did not establish that she was eligible for, and merited as a matter of discretion, a waiver that classification's job offer requirement. We dismissed a subsequent appeal, as well as four combined motions to reopen and reconsider. In our most recent decision, we rejected the Petitioner's appeal of our fourth motion decision because we do not have jurisdiction over appeals of our decisions. The matter is now again before us on combined motions to reopen and reconsider.

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 reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). As noted above, we rejected the Petitioner's appeal of our fourth motion decision because we do not have jurisdiction over appeals of our decisions. *See AAO Practice Manual*, Ch. 3.2(e), www.uscis.gov/aao-practice-manual. On motion, the Petitioner resubmits the project plan for her proposed "STEM Sanctuary Garden" and other documentation relating to events occurring after the initial filing of her petition. However, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1).

More importantly, the regulations make no provision for filing a motion to reopen or reconsider a rejected appeal. The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding," and here we rejected that prior appeal. 8 C.F.R. § 103.5(a)(1)(i), (ii). When we reject

an appeal, the appeal does not retain a filing date, and there is no merits-based decision for us to review. *See AAO Practice Manual*, Ch. 4.5(a). Accordingly, we will dismiss the motion to reopen and the motion to reconsider because they do not meet the applicable requirements.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.