



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

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

In Re: 27296829

Date: JUN. 6, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a legal administrator, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement is in the national interest. We dismissed a subsequent appeal and three previous combined motions to reopen and motions to reconsider. The matter is now before us on the fourth combined motion to reopen and motion to 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 combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 proceeding 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992).

On motion, the Petitioner submits a brief, a copy of our latest decision, and a printout from the United States Citizenship and Immigration Services (USCIS) website regarding its response to COVID-19 and providing flexibility in deadlines for certain requests, notices, and appeals. The Petitioner does not submit additional documentary evidence in support of the combined motion. Additionally, the Petitioner's brief appears to be substantially like the brief submitted in support of the third combined motion, although the Petitioner adds new claims to this brief, which we address below.

As to the Petitioner's motion to reopen, the Petitioner does not state any new facts and does not submit any documentary evidence, as required by 8 C.F.R. § 103.5(a)(2). A motion that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4). Because the motion to reopen does not satisfy the applicable requirements, it must be dismissed.

As to the Petitioner's motion to reconsider, the Petitioner contests the correctness of our prior decision. First, the Petitioner asserts that the new evidence that he submitted in support of his prior combined motion was "disregarded and ignored." However, upon review of the record, we conclude that the evidence the Petitioner submitted in the third combined motion was not "disregarded and ignored." Rather, the evidence was considered, and we determined that it did not establish a new fact that would warrant reopening of the proceeding.¹ Moreover, the Petitioner does not cite to any specific law or policy that was incorrectly applied in considering the evidence, as required for a motion to reconsider.

Next, the Petitioner asserts that his ability to appeal the initial decision was limited by the fact that, in our appellate decision, we withdrew the Director's determination that the Petitioner established eligibility under the first prong of the *Dhanasar* analytical framework and concluded that the Petitioner had not established eligibility under this prong. The Petitioner claims that because the Director concluded that this prong was established, the Petitioner did not have the opportunity to provide additional evidence in support of this prong. However, we note that we review questions in appeals de novo, and the Petitioner does not cite to any law or policy that prohibits us from withdrawing a conclusion of the Director. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

Moreover, this claim relates to our initial decision dismissing the Petitioner's appeal, and not the dismissal of the third combined motion. The Petitioner did not raise this argument in his first, second, or third motions to reconsider, although he had the opportunity to do so, and asserts this claim for the first time now on his fourth motion to reconsider. As stated above, our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). To succeed on motion, the Petitioner must first establish that the dismissal of the third combined motion was based on an incorrectly applied law or policy, which he has not done. 8 C.F.R. § 103.5(a)(1)(i), (a)(3).

Finally, the Petitioner restates many of the same claims and references the same evidence that we have addressed in our prior appellate and motions decisions. As noted above, the Petitioner's brief is substantially like the brief submitted in support of his third combined motion. Because we have already discussed those claims and evidence, we need not address them again here. The Petitioner's remaining contentions in the current motion to reconsider merely reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (explaining that "a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

¹ In our prior decision dismissing the Petitioner's third combined motion, we noted that although the Petitioner submitted a copy of his 2021 tax documentation in support, that documentation did not establish the Petitioner's eligibility at the time the petition was filed in 2018, as required by 8 C.F.R. § 103.2(b)(1), and that the Petitioner did not establish how the tax documentation showed that we erred in dismissing the second combined motion.

As stated above, the Petitioner has not established any new facts to warrant reopening the proceeding. The Petitioner also has not established that our prior decision was based on an incorrect application of law or policy.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.