



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

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

In Re: 27529491

Date: JUNE 14, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a researcher of international relations, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. We dismissed a subsequent appeal and two motions to reconsider. The matter is now before us on a third 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 motion.

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 proceedings 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.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), which set forth a three-pronged test in which a petitioner seeking a national interest waiver must provide details about the individual's proposed endeavor in the United States, and demonstrate that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

The Petitioner filed the petition in January 2019. The Director denied the petition in March 2021. The Petitioner appealed the Director's decision in May 2021. We dismissed that appeal in November 2021. The Petitioner filed a motion to reconsider in December 2021, which we dismissed in June 2022. In July 2022, the Petitioner filed a second motion to reconsider, which we dismissed in January 2023. The matter is now before us on a third motion to reconsider, filed in March 2023.

As we explained in our January 2023 decision, the scope of a motion to reconsider is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Here, the prior decision is our January 2023 decision, dismissing the Petitioner's second motion to reconsider. We discuss the prior steps in this proceeding only for context.

In the initial denial decision, the Director concluded that the Petitioner's proposed endeavor met only the first *Dhanasar* prong, encompassing both substantial merit and national importance. The Petitioner's proposed endeavor involved a combination of teaching and research activities. In our November 2021 appellate decision, we withdrew the Director's conclusion that the Petitioner had established the national importance of her proposed endeavor. We noted that the petitioner in *Matter of Dhanasar* had not established the national importance of his proposed teaching activities. *Id.* at 893. We also concluded that the Petitioner had not provided enough details about the nature of her intended employment, which would affect its national importance. We agreed with the Director's conclusion that the Petitioner had not satisfied the second *Dhanasar* prong with sufficient evidence to show that she is well positioned to advance the proposed endeavor. We reserved consideration of the third *Dhanasar* prong, because such discussion was unnecessary to determine the outcome of the appellate decision.

In her first motion to reconsider, the Petitioner asserted that we had misapplied "the principles articulated in *Dhanasar*," and argued that she had sufficiently established eligibility for the waiver. We dismissed that motion, stating: "the Petitioner's statement . . . does not provide sufficient details, corroborated by objective evidence, to establish how the proposed research endeavor would have 'national or even global implications within a particular field.'"

In her second motion to reconsider, the Petitioner stated:

In the [first] Motion, we argued that the AAO's decision . . . was based on its misapplication of the principles articulated in *Matter of Dhanasar*. . . .

In the Second Dismissal, the AAO [Administrative Appeals Office] appears to concede to these points, as it does not challenge our reasoning or object to the conclusions presented in the [first] Motion. However, the Second Dismissal then goes on to object to the fact that the Motion did not contain any new evidence and only discussed [the Petitioner's] previously submitted personal statement. . . . The AAO then goes on to dismiss the motion based on the fact that we had not provided more evidence to establish that [the Petitioner's] proposed endeavor has national importance.

. . . As the AAO has noted, the Motion to Reconsider is not the appropriate venue to introduce new evidence or facts . . . [and] counsel has been told numerous times over not to resubmit evidence that USCIS already has on file.

We dismissed the second motion, disputing the Petitioner's contention that we had conceded key points in the first motion. Also, in a motion to reconsider, we do not expect a petitioner to submit new evidence or copies of previously submitted evidence. Nevertheless, the burden is on the petitioner to explain how the existing record does not support our previous decision. It was for this reason that, in our June 2022 decision, we observed that "the Petitioner's statement . . . does not provide sufficient details, corroborated by objective evidence. . . ." The conclusion that particular statements are uncorroborated is not a determination that the Petitioner should have submitted *new* evidence, nor is a determination that the record does not contain *any* evidence. Our appellate decision identified and discussed several of the materials the Petitioner had previously submitted in support of the petition.

The Petitioner has now filed a third motion to reconsider. On motion, the Petitioner mischaracterizes her second motion, stating it contained arguments that actually appeared in the *first* motion. The Petitioner further summarizes the second motion:

We further noted that the law had been erroneously applied in the Dismissal, and respectfully requested the AAO to return to the evidence on record and review it once again while applying the proper legal standard. . . . We stated that in addition to the personal statement, Petition included objective evidence confirming broader implications of [the Petitioner's] proposed endeavor. . . . Lastly, we requested that the AAO apply the correct standard to the evidence on record and reevaluate the evidence to confirm that [the Petitioner] is more likely than not to have met the [eligibility requirements].

However, in the Third Dismissal, the AAO concluded that " . . . the Petitioner . . . does not identify or discuss the specific documentation that she believes we overlooked or misconstrued in arriving at our conclusions, based on the evidence in the record at that time, nor does she show how we misapplied law, regulation or USCIS policy." . . . This document will first present the legal evaluation of whether the AAO misapplied *Matter of Dhanasar* in evaluating national importance, then proceed to evaluate the Dismissal with respect to the three prongs of *Dhanasar*, sequentially, and establish eligibility for the benefit sought in the Petition.

The remainder of the brief, however, does not directly address the quoted conclusion from our January 2023 decision. Instead, most of the Petitioner's brief on motion is copied, either directly or with minimal changes in wording, from earlier briefs submitted on appeal in May 2021 and her first motion in December 2021. A motion to reconsider is not a process by which a party may submit, in essence, the same brief previously presented and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

A motion to reconsider does not entail *de novo* review of the entire record of proceeding, and a petitioner's general assertion that the record supports approval of the petition cannot suffice as a basis for reconsideration. In a motion to reconsider, the burden is on the Petitioner to specifically identify evidence already in the record to show that we had erred in our prior decision.

The purpose of a motion to reconsider is to show error in the most recent prior decision. The Petitioner's latest filing does not meet this standard. We addressed the Petitioner's prior arguments in our earlier decisions, and the Petitioner's repetition of the same arguments does not show proper cause for reconsideration.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision in January 2023. Therefore, we will dismiss the motion. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.