



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

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

In Re: 24605343

Date: MAR. 13, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a sales director, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, 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 the Petitioner had not established eligibility as an advanced degree professional or individual of exceptional ability. We dismissed the subsequent appeal, concluding the Petitioner had not overcome the Director's finding. The matter is now before us on a combined motion to reopen and reconsider. The Petitioner continues to assert he is eligible for a national interest waiver and submits a brief in support.

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 combined motion to reopen and reconsider.

## I. LAW

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 (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant must not only meet the formal filing requirements (such as submission of a properly completed Form I 290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

## II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to “the prior decision.” 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has submitted new facts to warrant reopening or has established that our decision to dismiss the prior combined motion was based on an incorrect application of law or USCIS policy. We therefore incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Applicant’s claims on motion.

#### A. Motion to Reconsider

The Petitioner’s motion brief states:

The Service did not give full consideration to the evidence provided by the Petitioner along with the first filing in the RFE response, as it should be given. In fact, the documents listed by the Service in the denial letter are proof that the Petitioner has presented all the necessary documents along with the filing and RFE response, but those documents were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America. Should Petitioner’s documents have been properly reviewed by the Service, it would have been concluded that the Petitioner not only qualifies for the requested classification as a person of Exceptional Ability, but also meets all the three prongs of Dhanasar for the National Interest Waiver. . . [T]he Service denial of this petition is contrary to law or policy, and unsupported by the evidence of record. Consequently, the Petitioner respectfully requests the AAO to reconsider the adverse decision and reopen the Petitioner’s Form I-140.

The filing before us does not entitle the Petitioner to a reconsideration of the denial of the petition. Rather, a motion to reconsider pertains to our most recent decision. In other words, we examine any new arguments to the extent that they pertain to our prior dismissal of the Petitioner’s appeal. Therefore, we cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding. Here, the Petitioner alleges a general error in the Director’s decision but does not identify any specific error or law or fact in our prior decision.

In addition, the Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. See *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Accordingly, even if the Petitioner had argued that the AAO failed to give full consideration to the evidence, we would still deny the motion to reconsider, as the Petitioner’s argument would lack the specificity required for a motion to reconsider.

For the foregoing reasons, the Petitioner has not shown that our prior decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must be dismissed.

## B. Motion to Reopen

The Petitioner submits no additional or new evidence on motion. Therefore, the Petitioner has not shown proper cause for reopening the proceedings.

## III. CONCLUSION

For the reasons discussed, the Petitioner's motion to reconsider has not shown that our prior decision was based on an incorrect application of law or USCIS policy, and the motion to reopen does not overcome the grounds underlying our prior decision. Therefore, the combined motion to reopen and reconsider will be dismissed.

ORDER:       The motion to reconsider is dismissed.

FURTHER ORDER:       The motion to reopen is dismissed.