



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

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

In Re: 29787284

Date: JAN. 2, 2024

Motions on Administrative Appeals Office Decision

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

The Petitioner seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer in this category - and a related requirement for certification from the U.S. Department of Labor - if a petitioner demonstrates that waiving these U.S.-worker protections would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate the merits of his waiver request. On appeal, we affirmed the Director's finding that the Petitioner did not establish the "national importance" of his proposed U.S. information technology consulting business. *See In Re: 27437853* (AAO July 12, 2023).¹ We reserved consideration of the Director's other findings. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

The matter returns to us on the Petitioner's combined motions to reopen and reconsider. He asserts that, by undervaluing evidence of his proposal's national importance, we violated his Constitutional rights.

The Petitioner bears the burden of demonstrating eligibility for the requested waiver by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that the motion to reopen does not meet applicable requirements and that the motion to reconsider does not establish his eligibility for the requested waiver. We will therefore dismiss the motions.

¹ Besides demonstrating the national importance of their endeavor and eligibility for the EB-2 category, a petitioner requesting a national interest waiver must demonstrate that: their proposal has "substantial merit;" they are "well-positioned" to advance the endeavor; and, on balance, a waiver would benefit the United States). *Matter of Dhanasar*, 26 I&N Dec. 884, 889-91 (AAO 2016).

I. LAW

A motion to reopen must state new facts supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate that our prior decision misapplied law or USCIS policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant motions that meet these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992).

II. ANALYSIS

A. Motion to Reopen

Contrary to motion-to-reopen requirements, the Petitioner does not state any new facts. We must therefore deny his motion to reopen. *See* 8 C.F.R. § 103.5(d) (“A motion that does not meet applicable requirements shall be dismissed.”)

B. Motion to Reconsider

The Petitioner contends that we misanalysed evidence of his proposal’s national importance. He alleges that we “violat[ed] the Fourth Amendment of the Constitution of the United States of America as Petitioner provided timely and proper notice to his RFE [request for additional evidence] response to USCIS.”

The Petitioner’s Constitutional argument lacks merit. The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The Petitioner does not explain how USCIS searched or seized him in this matter. As the Fourth Amendment does not appear to apply, the Petitioner’s Constitutional argument is unpersuasive. Also, the Petitioner does not specify any evidence that we allegedly misanalysed or that purportedly demonstrates his proposal’s national importance. Thus, his motion to reconsider does not establish his eligibility for a national interest waiver.

III. CONCLUSION

The Petitioner’s motion to reopen does not state new facts. Also, his motion to reconsider does not demonstrate his eligibility for the requested national interest waiver.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.