



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

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

In Re: 33401786

Date: SEPT. 09, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur in the physical fitness industry, 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 the record neither establishes that the Petitioner qualifies as a member of the professions holding an advanced degree, nor does it establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. We dismissed a subsequent appeal. The matter is now 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 documentary evidence. 8 C.F.R. § 103.5(a)(2). 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) (requiring that new evidence have the potential to change the outcome).

The Petitioner indicates on the Form I-290B, Notice of Appeal or Motion, that his submission is both a motion to reopen and a motion to reconsider. The Petitioner also submits a brief that refers to the submission as “Motion to Reopen and Reconsider.” However, the Petitioner does not identify a new fact, nor does he submit documentary evidence of such a fact in support of the motion. Because the submission does not identify a new fact, and it is not supported by documentary evidence of such a fact, it does not satisfy the requirements of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). Therefore, the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

Next, 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 to reconsider, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner asserts, “[t]he appeal dismissal decision is deficient, as it does not evaluate all the arguments presented by the Petitioner in the appeal that would, undoubtedly, lead to a different conclusion, proving that the Petitioner not only qualifies for the requested classification, but also meets all the requirements for the National Interest Waiver.” The Petitioner further asserts that his “documents were not properly analyzed by the Service, violating the Fifth Amendment of the Constitution of the United States of America.” The Fifth Amendment in part states that “[n]o person shall be . . . deprived of life, liberty, or property without due process of law.” U.S. Const. amend. V. The Petitioner’s motion, however, does not explain how his due process rights were violated or specifically identify which documents “were not properly analyzed” and explain how they render him eligible for EB-2 classification and a national interest waiver.

The Petitioner asks that we “reconsider the adverse decision and reopen [the petition] and give full consideration [to] all the submitted documents.” In our decision dismissing the appeal, we concluded that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). The Petitioner stated that he will boost local economies, support small businesses, and create opportunities for local communities; however, his statements were not sufficiently supported by relevant, probative, and credible evidence. *Chawathe*, 25 I&N Dec. at 376. In addition, we explained that the Petitioner’s past experience is applicable to prong two analysis but is not proof of the national importance of his proposed endeavor. While we did not discuss every document submitted, we carefully reviewed and considered each one, citing, and quoting from many of the documents in the record.

The Petitioner asks for reconsideration of the decision as a whole but does not specifically identify on motion any specific documents or evidence that we overlooked in our appellate review of the record, how such evidence addresses any particular aspect of the requirements, and how we may have erred in our analysis of such evidence in our prior decision. See 8 C.F.R. § 103.5(a)(1)(ii) (limiting the scope of a motion to the latest decision). In addition, the Petitioner does not explain how our prior decision may have violated his fifth amendment rights. The Petitioner bears the burden to demonstrate eligibility or, in this case, the applicability of the law or policy he asserts we incorrectly applied in the latest decision. 8 C.F.R. § 103.5(a)(3); see also 8 C.F.R. § 103.5(a)(1)(ii); *Matter of Chawathe*, 25 I&N Dec. at 375-76. 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. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

The Petitioner did not identify any new facts, or submit any additional documentary evidence of such facts, and therefore, the Petitioner has not established eligibility for a motion to reopen. 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. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.