



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

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

In Re: 33487176

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 field of online instruction, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 an individual of exceptional ability, 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. The Petitioner first claims that we erred by not analyzing the Petitioner's eligibility for a national interest waiver under the *Dhanasar* framework. See *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). In our prior decision, we did not discuss the Petitioner's eligibility under the *Dhanasar* framework because we concluded that the Petitioner was not eligible for the underlying EB-2 classification. Further analysis of his eligibility for a national interest waiver would serve no meaningful purpose as he does not qualify for the underlying classification. As noted in our prior decision, we are not required to make findings on issues the decision of which is unnecessary to the results we reach. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n. 7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

Further, the Petitioner states that our appellate decision, “[w]rongly determined that the Petitioner does not qualify as a professional holding an advanced degree or as an individual of exceptional ability. . . and didn’t consider all the evidence . . .” In addition, the Petitioner asserts that the “documents were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution.” The Petitioner's motion, however, does not specifically identify which documents “were not properly analyzed” and explain how they render him eligible for EB-2 classification. In addition, he has not discussed how our decision violates the fourth amendment of the Constitution.

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 was not eligible for the EB-2 classification as an individual of exceptional ability. We discussed in detail each of the six evidentiary criteria and referenced the relevant evidence 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 fourth 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.