U.S. Citizenship and Immigration Services

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

In Re: 35250740

Date: JAN. 6, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an agronomist engineer, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 the Petitioner did not establish that eligibility for a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal of that decision in February 2024, as well as a subsequent motion to reconsider in July 2024. The matter is now before us again on a motion to reopen.

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 affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii).

With the Petitioner's motion to reopen, he submits additional evidence including, among other things, an employment letter, articles, and a copy of his approval notice for another Form I-140 petition. The Petitioner asserts that these documents demonstrate new facts further supporting his eligibility for a national interest waiver. While some of these documents are themselves new to the record, the Petitioner has not provided new facts to establish that we erred in dismissing his prior motion to reconsider.

As noted above, our review on motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision, which, in this case, is our July 2024 dismissal of the Petitioner's motion to reconsider. In that decision,

we concluded that the Petitioner did not meet the motion requirements because he did not identify any specific error of law or policy that was incorrectly applied in the previous decision before that motion, which was our dismissal of his appeal in February 2024.

When we adjudicated the Petitioner's motion to reconsider, we were required to take into account the regulation at 8 C.F.R. § 103.5(a)(3), which states that a motion to reconsider must, when filed, establish that "the decision was incorrect based on the evidence of record at the time of the initial decision." By definition then, the Petitioner's new evidence before us today was not in the record at the time of our initial dismissal of the Petitioner's appeal in February 2024 or at our subsequent dismissal of his motion to reconsider in July 2024. Because the regulation requires that the Petitioner's motion to reconsider establish that the prior decision was incorrectly decided based on the evidence in the record *at the time of the decision*, the Petitioner cannot establish that his motion to reconsider was incorrectly decided based on this new evidence he presents before us today.

Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. Therefore, the motion to reopen will be dismissed, and the underlying petition will remain denied.

**ORDER:** The motion to reopen is dismissed.