U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43530003

Date: JUL. 20, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, an industrial engineer, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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).

U.S. Citizenship and Immigration Service (USCIS) denied the petition, concluding the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest. USCIS determined the Petitioner established that his proposed endeavor, consistent with the first prong of *Dhanasar*, had substantial merit and national importance. *Matter of Dhanasar*, 26 I&N Dec. at 889. However, USCIS also concluded the Petitioner did not demonstrate that he was well-positioned to advance the proposed endeavor pursuant to the second prong of *Dhanasar*. *Id*. at 890. 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 motions.[1]

In denying the appeal, we agreed with the USCIS denial decision that the Petitioner did not demonstrate he was well-positioned to advance the proposed endeavor. We reasoned that the Petitioner did not submit sufficient evidence to substantiate his assertions that his claimed manufacturing processes contributed to the [redacted] sweepstakes and his were the basis for his employer, [redacted] licensing of its products to customers and his employer's provision of these services. For instance, we noted that the record did not include supporting evidence substantiating the Petitioner's specific contributions to the HGTV projects.

Likewise, we stated the Petitioner did not sufficiently support his claim that his manufacturing processes were the basis for a leading client, [redacted] to license its engineering work. We reasoned that the Petitioner did not properly define the relationship between his employer and [redacted] provide a supporting licensing agreement, or demonstrate that the Petitioner's work was the basis of this

agreement as claimed. We further discussed a submitted support letter from a structural consultant and professional engineer, A.L., and determined that although it spoke highly of the Petitioner's work as a competent engineer, it did not sufficiently discuss his proposed endeavor or his progress in achieving it, success in improving manufacturing techniques for composites and other recycled materials, or his record of success. In addition, we indicated that the Petitioner also did not properly establish the interest of potential customers, users, investors, or other relevant entities or individuals in his work. In sum, we acknowledged the Petitioner's education, skills, and knowledge, but ultimately concluded that the evidence did not establish his record of success in related efforts, his progress towards achieving his endeavor, or interest from potential or other relevant entities as necessary to demonstrate that he is well-positioned to advance his proposed endeavor.

On motion, the Petitioner contests the correctness of our prior decision. The Petitioner asserts that it was incorrect to conclude there was insufficient evidence to demonstrate that his manufacturing advancements and processes were the reason his employer was contracted to perform the [redacted] services. The Petitioner contends he submitted evidence and letters to corroborate his significant contributions to the composition and design of pergolas featured by [redacted] from 2020-2025. On appeal, the Petitioner supplements the record with documentation he asserts reflects his "undisputable role" in creating the initial design of a pergola featured on 2026 [redacted] promotional materials. The Petitioner states that he has "repeatedly played a critical role in projects that received an astounding level of visibility to the general public" reflecting his advancement in his field.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (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).

Upon review, we conclude that the new evidence provided on appeal does not demonstrate that the Beneficiary is well-positioned to advance his proposed endeavor. As discussed above, we determined that the Petitioner did not establish his record of success, his progress towards achieving his endeavor, or interest from potential or other relevant entities as necessary to demonstrate that he is well-positioned to advance his proposed endeavor. Here, the Petitioner provides several pages of [redacted] promotional materials related not only to the emphasized pergola, but various other components of a model backyard retreat, including furniture, an outdoor kitchen, a patio, decking, among other similar items. The Petitioner also provides screenshots reflecting his apparent involvement with a project in November 2025 for a [redacted] with a graphic depiction of a pergola, him approving a "shop drawing" in 2025, and listing him as an "administrator" in the Petitioner's workflow system.

Although the new evidence appears to indicate that the Petitioner works in a position of managerial authority with some ability to approve the work of others, it substantiates little else with respect to his assertions regarding the critical and widespread impact of his work. For instance, the three screenshots do little to demonstrate that it was the Petitioner's innovations in manufacturing processes that formed the basis of his employer's claimed critical relationship with [redacted] from 2020 to 2026. We acknowledged in our prior decision that the Petitioner already provided evidence indicating that he was likely involved in, and contributed to, the [redacted] project and this is not in dispute. However, we reasoned

the Petitioner did not sufficiently demonstrate that it was his claimed manufacturing advancements or processes which spearheaded this project. Notably, the new evidence does not address the lack of documentary evidence of the Petitioner's contributions to the [redacted] projects from 2020 to 2026, and as such, does little to substantiate his record of success and his claimed "undisputable role" in creating the initial design of a pergola.

In fact, evidence from 2025 and 2026 is of questionable probative value in demonstrating his initial design of the claimed pergola and does not support his assertion that he "repeatedly played a critical role in projects that received an astounding level of visibility to the general public." In contrast, the screenshots from his employer's internal systems, at most, demonstrate his approval of one drawing and his contribution to a project in 2025. As discussed, the screenshots provided on appeal do not address the lack of evidence of the Petitioner creating claimed manufacturing advancements or processes forming the basis of his employer's provision of services or his specific contributions to the [redacted] projects over five years. As such, the new evidence does not sufficiently demonstrate the Petitioner's claimed record of success at his employer, his progress towards achieving his endeavor, or interest from potential or other relevant entities as necessary to demonstrate that he is well-positioned to advance his proposed endeavor. The Petitioner must resolve ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As such, for the foregoing reasons, the new evidence provided on motion does not establish the Petitioner's eligibility for the benefit sought; therefore, the motion to reopen must be dismissed.

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.

In support of the motion to reconsider, the Petitioner contends that the submitted employer letters and independent evidence sufficiently corroborate his significant contribution to the [redacted] pergola design and it being prominently featured in promotional media. The Petitioner states that we erred in emphasizing that his name was not included in these promotional materials. The Petitioner points to a letter from the company's chief operating officer (COO) and his discussion of [redacted] licensing agreement with [redacted] The Petitioner claims it submitted extensive evidence regarding numerous projects in which he participated, including the aforementioned [redacted] among others.

The Petitioner has not demonstrated that our prior decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of the decision. As we have previously noted, we do not dispute that the Petitioner is likely a valuable employee who appears to have been involved with numerous projects with his employer. Again, our conclusion was that the Petitioner did not sufficiently establish, as claimed, that his manufacturing advancements or processes formed basis of the [redacted] projects from 2020 to the present. For instance, we noted that the record did not include supporting evidence substantiating the Petitioner's specific contributions to the [redacted] projects. As discussed, the Petitioner does little to remedy this evidentiary deficiency on appeal. It is

reasonable to conclude that if the Petitioner and his innovations were as fundamentally critical to various projects within his employer's operations that there would be more than three ambiguous screenshots to substantiate this asserted record of success over several years.

Likewise, we stated the Petitioner did not sufficiently support his claim that his manufacturing processes were the basis for a leading client, [redacted] to license its engineering work. We reasoned that the Petitioner did not properly define the relationship between his employer and the referenced client, provide a supporting licensing agreement, or demonstrate that the Petitioner's work was the basis of this agreement as claimed. On motion, the Petitioner again emphasizes a letter from the COO of his employer demonstrates his critical role with [redacted] but this letter does not discuss his contributions to this client relationship, in contrast, it discussed his role in spearheading a water jet machine project. Once again, we do not doubt that the Petitioner is, and was, likely a valuable contributor to his employer and this is conveyed in support letters. That said, there is little supporting documentation to substantiate that the Petitioner spearheaded his employer's relationship with [redacted] over several years, beyond a few screen shots now submitted for the first time on motion.[2] Therefore, the Petitioner has not sufficiently established that our prior decision was based on an incorrect application of law or policy at the time of the decision or his eligibility for the benefit sought.[3]

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.

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[2] 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). The Petitioner's contentions in her current motion merely reargue facts and issues we have already considered on appeal. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision").

[3] Since the identified basis for dismissal is dispositive of the Petitioner's motion, we decline to reach and hereby reserve the Petitioner's eligibility and motion arguments under *Dhanasar*'s third prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).