U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42777991

Date: MAY 8, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, an automotive technician, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, and a national interest waiver of the job offer requirement attached to this classification. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that (1) he qualifies for classification as an alien of exceptional ability and (2) a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal and six motions to reopen, reconsider, or both. The matter is now before us on combined motions to reopen and reconsider, the seventh motion overall.

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). 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).

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).

On motion, the Petitioner submits a revised business plan and asserts that he has satisfied the three prongs of the national interest test set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). SCOPS discussed *Dhanasar* in the initial denial decision, issued March 13, 2023. That decision from 2023 is not the latest decision in these proceedings and therefore it is not under review in this motion decision. Because SCOPS also determined that the Petitioner had not established eligibility for the underlying EB-2 immigrant classification, our appellate decisions focused on the latter issue and did not address the requirements in *Dhanasar*.

In our November 1, 2024 decision dismissing the Petitioner's second motion, we stated:

> [T]he 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). . . . Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. . . . We will not re-adjudicate the petition anew.

Despite being on notice of the above information, the Petitioner, in his latest, seventh motion, does not address our stated grounds for dismissing his sixth motion. Instead, the Petitioner seeks to dispute conclusions only found in the original 2023 denial of the petition. Even then, the latest motion only addresses one of several grounds for denial stated in that 2023 decision. Therefore, the arguments and evidence submitted in the latest motion would not suffice to establish eligibility even if they successfully overcame the issue they address.

In our prior decision, issued in February 2026, we identified procedural defects in the Petitioner's sixth motion. The Petitioner's latest filing does not identify any error in our February 2026 decision, and the evidence submitted on motion does not address our February 2026 decision. Therefore, the Petitioner's latest filing does not meet the requirements of a motion to reopen or of a motion to reconsider. For this reason, we will dismiss the motion. *See* 8 C.F.R. § 103.5(a)(4).

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.