



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

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

In Re: 30885259

Date: APRIL 25, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a researcher, seeks employment-based second preference (EB-2) 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 EB-2 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 Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner appealed the matter to us. In our decision dismissing the appeal, we agreed with the Director's conclusion that the Petitioner met the first prong of the analytical framework described in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We nonetheless dismissed the appeal, concluding that the Petitioner did not establish that she is well positioned to advance the proposed endeavor under the second prong.

The matter is now before us 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 documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." 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 the aforementioned requirements and demonstrate eligibility for the requested benefit.

The record shows that the Petitioner's proposed endeavor is to continue working as a scientific researcher in the field of geology. The Petitioner seeks to support the training of new researchers and geoscientists in addition to working in the field of research. In our decision, while we concluded that the Petitioner met the underlying EB-2 classification and the first prong, we noted why the Petitioner

failed to meet the second prong of the analytical framework set forth in *Dhanasar*. We further explained how the Petitioner had not demonstrated that she is well positioned to advance her proposed endeavor. In support of her motion to reopen, the Petitioner submits a letter explaining how her academic background and professional experience demonstrate her eligibility to advance her proposed endeavor and provides additional information related to her endeavor. The Petitioner also submits two letters of recommendation. Although the authors praise the Petitioner's professionalism, they fail to discuss the Petitioner's proposed endeavor and whether she is well positioned to advance her endeavor. Moreover, one of the authors' usage of inconsistent gender pronouns when referring to the Petitioner calls into question the care with which the letter was prepared.

The Petitioner asserts that her motion to reopen "has met all the necessary requirements to reopen the case." We disagree. The Petitioner's motion does not address our specific determinations and conclusions or establish that they were in error. Instead, the Petitioner reiterates her professional experience and why she believes she is a recognized and an excellent geologist. Although we acknowledge the Petitioner's assertions and the additional documents she provides, the Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings nor explained how we erroneously denied her appeal. The Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our appellate decision. For the reasons explained above, we will dismiss the Petitioner's motion to reopen.

ORDER: The motion to reopen is dismissed.