



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

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

In Re: 21781549

Date: AUG. 4, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a mathematics teacher, seeks second preference immigrant 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, and we summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v). We then dismissed two subsequently filed combined motions to reopen and to reconsider, and we dismissed one more motion to reopen. The matter is again before us on a motion to reopen.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen.

I. LAW

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."

II. ANALYSIS

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Accordingly, we examine any new facts to the extent that they pertain to our prior dismissal of the Petitioner's motion to reopen, her third motion after we summarily dismissed her appeal because she

“fail[ed] to identify specifically any erroneous conclusion of law or statement of fact.” 8 C.F.R. § 103.3(a)(1)(v). In our dismissal of the Petitioner’s first combined motion to reopen and to reconsider, we explained that the Petitioner did “not demonstrate how the evidence provided on motion address[ed] the stated grounds for summary dismissal” or that “our findings were in error.” We further indicated that if, “[f]or example, . . . the Petitioner had shown that an appellate brief was submitted within [30] days after filing her appeal, and that we erred by missing or disregarding the brief, then there would be grounds to reopen the proceeding.” *See id.*; *see also* 8 C.F.R. § 103.5(a)(2). Next, we dismissed the Petitioner’s second combined motion to reopen and to reconsider because she did “not provide new facts related to our prior decision or any new documentary evidence” and she did “not refer to any legal authority to demonstrate that we erred in denying her prior motion.” *See id.*; *see also* 8 C.F.R. § 103.5(a)(3). Then, we dismissed the Petitioner’s subsequent motion to reopen, her third motion overall, because she “again fail[ed] to address our prior decision(s) and focuse[d] on her qualifications and passion for teaching.” We explained, “before we address the merits of the petition, the Petitioner must overcome our prior dismissals and the basis for summarily dismissing her appeal,” which she had not done.

In support of the instant motion to reopen, the Petitioner submits a brief and documents dated 2021, relating to events that occurred in 2021. A petitioner must establish eligibility at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). A petition may not be approved at a future date after a petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm’r 1978). Because the documents are dated 2021, and they relate to events that occurred in 2021, after the 2012 petition filing date, they may not establish eligibility. *See id.* Moreover, even if the documents could establish eligibility, which they cannot, they do not address our prior dismissals and the basis for summarily dismissing her appeal—that the Petitioner did not identify specifically any erroneous conclusion of law or statement of fact in the Director’s decision when she submitted her appeal, or within the brief submission period. *See* 8 C.F.R. § 103.5(a)(1)(i).

In the brief submitted in support of the motion to reopen, the Petitioner discusses the documents she submitted, which may not establish eligibility for the reason explained above, and she asserts that she “believe[s] that this appeal will merit a reopening due to new evidence submitted that will qualify for national impact and importance.” As we explained before in our prior decisions, we cannot address whether the Petitioner qualifies for a national interest waiver until the Petitioner first establishes that our summary dismissal of the appeal was in error. Specifically, the Petitioner bears the burden of establishing that she, in fact, submitted a brief or other statement that identified specifically any erroneous conclusion of law or statement of fact in the Director’s decision when she submitted her appeal in 2017, or within the brief submission period. *See* 8 C.F.R. § 103.5(a)(1)(i); *see also* section 291 of the Act. For the reasons explained above, we will dismiss the Petitioner’s motion to reopen.

III. CONCLUSION

The Petitioner has not established relevant new facts that would warrant reopening the proceedings. Specifically, the Petitioner has not established that we erred by summarily dismissing the appeal. Therefore, we have no basis for reopening our prior decision. The Petitioner’s underlying petition remains denied.

ORDER: The motion to reopen is dismissed.