



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

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

In Re: 20636788

Date: MAR. 17, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the subsequent appeal, concluding that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the analytical framework described in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). The Petitioner filed a combined motion to reopen and motion to reconsider, which we dismissed as the Petitioner did not meet the motion requirements enumerated at 8 C.F.R. § 103.5.¹

The matter is now before us again on a combined motion to reopen and motion to reconsider.² 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 combined motions.

I. MOTION TO RECONSIDER

A motion to reconsider must establish that our 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. On motion, the Applicant does not

¹ Our most recent decision in this matter was ID# 17574494 (AAO SEP. 15, 2021).

² Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *See INS v. Abudu*, 485 U.S. at 110.

contend that our last decision was based on an incorrect application of law or policy; therefore, the submission does not meet the requirements of a motion to reconsider. *Id.*

II. MOTION TO REOPEN

By regulation, the scope of a motion is limited to “the prior decision.” 8 C.F.R. § 103.5(a)(1)(i). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Resubmitting previously provided evidence or reasserting previously stated facts do not meet the requirements of a motion to reopen. The new facts must also be relevant to the grounds of the unfavorable decision.

In our prior decision issued in September 2021, we reaffirmed our determination on appeal that the Petitioner had not established the national importance of her proposed endeavor, and thus her eligibility under the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. We limited our previous decision on motion to an analysis of the first *Dhanasar* prong, as there was no constructive purpose in addressing her eligibility under the second and third prongs of *Dhanasar* because it could not change the outcome of the motion.³ We dismissed the Petitioner’s motion to reopen because she did not present on motion new facts to establish her eligibility for a national interest waiver.

In the current motion the Petitioner cites previously submitted evidence relating to her eligibility for a national interest waiver, which has already been considered in our previous decisions. We incorporate our previous analysis of the Petitioner’s assertions and evidence provided in support of the dismissed motion to reopen. Accordingly, the Petitioner has not shown proper cause for reopening the proceedings with regard to her eligibility for a national interest waiver.

III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration of our prior decision, nor established eligibility for the benefit sought.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.

³ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); see also *Matter of L-A-C-*, 26 I&N Dec. 516,526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).