



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

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

In Re: 22678653

Date: OCT. 19, 2022

Appeal of Texas Service Center 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish that he is a member of the professions holding an advanced degree or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director dismissed the subsequent combined motion to reopen and reconsider solely because it was not accompanied by a statement about whether the unfavorable decision has been the subject of any judicial proceeding. *See* 8 C.F.R. § 103.5(a)(1)(iii)(C). The matter is now before us on appeal.

The Petitioner has the burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for issuance of a new decision.

The required statement on judicial proceedings under 8 C.F.R. § 103.5(a)(1)(iii)(C) is a procedural rule that helps U.S. Citizenship and Immigration Services identify those cases involving judicial proceedings so they can be held in abeyance pending the outcome of litigation involving the originally filed petition. *See, e.g.* Memorandum from Richard E. Norton, Assoc. Comm'r for Examinations, Immigration and Naturalization Service, *Adjudication of Petitions and Applications which are in Litigation or Pending Appeal* (Feb. 8, 1989).

On appeal, the Petitioner's submission includes a statement that the Director's original decision denying his petition is not the subject of any judicial proceeding, the sole ground for dismissal. As a result, we withdraw the Director's decision and remand the matter for a new decision on the merits addressing whether the Petitioner's combined motion satisfies the requirements of a motion to reopen and a motion to reconsider at 8 C.F.R. § 103.5(a)(2) and (3).

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.