



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

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

In Re: 25920599

Date: FEB. 21, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a computer engineer, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center approved the petition and mailed notice of the approval to the address of record on August 8, 2022. On August 22, 2022, the Petitioner filed a Form I-290B, Notice of Appeal or Motion, as an appeal, identifying the receipt number of the underlying Form I-140, Immigrant Petition for Alien Workers, by the receipt number and the requested benefit type. Specifically, the appeal indicated that it sought an appeal of a decision dated April 27, 2022, which corresponds to the Director's denial of the Petitioner's prior request to expedite the adjudication of the Form I-140, not the Director's decision to approve the benefit request. We dismissed the appeal as moot because, as noted above, the Director approved the underlying requested benefit.

On December 22, 2022, the Petitioner filed a combined motion to reopen and motion to reconsider our decision to dismiss the appeal as moot. The combined motion specifically identifies the Administrative Appeals Office as the office that issued the adverse decision; therefore, we have jurisdiction over the motion. *See* 8 C.F.R. § 103.5(a)(1)(ii). We note, however, that the Petitioner also references in the combined motion a Form I-485, Application to Register Permanent Residence or Adjust Status, for a category over which we do not exercise jurisdiction, and that the referenced Form I-485 was filed after the date of the Director's Form I-140 approval. We further note that USCIS records indicate that the Petitioner has submitted several Forms I-485 with an Alien Number that does not match the Alien Number that corresponds to the approved Form I-140 and that USCIS has rejected the Forms I-485.

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). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon review, we will dismiss the combined 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.”

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 proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We do not consider new facts or evidence in a motion to reconsider.

Specifically, our review of this motion to reopen is limited to the issue of whether a new fact, supported by documentary evidence, establishes that we erred by determining that the appeal of the Form I-140 is moot because the Director approved the underlying benefit request. 8 C.F.R. § 103.5(a)(2). In turn, our review of this motion to reconsider is limited to the issue of whether, at the time we dismissed the appeal of the Form I-140 as moot because the Director approved the underlying benefit request, we incorrectly applied a law or policy. 8 C.F.R. § 103.5(a)(3).

On motion, the Petitioner discusses a series of temporary relocations, job opportunities, and a dental appointment throughout 2021-22. The Petitioner also references at least one Form I-485, and at least one Form I-765, Application for Employment Authorization, over which we do not exercise appellate jurisdiction. Those issues are separate from the eligibility requirements of a Form I-140, which the Director concluded the Petitioner satisfied when approving the Form I-140, over which we exercise appellate jurisdiction. The Petitioner does not assert a new fact on motion relevant to whether the Director approved the Form I-140, nor does he assert a new fact relevant to whether we erred by acknowledging that the Director approved the Form I-140, nor does he assert a new fact relevant to whether we erred by concluding that the appeal of the Form I-140 is moot because the Director approved the requested benefit. *See* 8 C.F.R. § 103.5(a)(2). In turn, the Petitioner does not identify a law or policy that we may have incorrectly applied when we determined, at the time of our decision, that the appeal is moot because the Director approved the underlying benefit request. *See* 8 C.F.R. § 103.5(a)(3).

In summation, the Petitioner has not submitted a new fact, supported by documentary evidence, sufficient to establish that we erred in concluding that the appeal is moot because the Director approved the underlying petition. *See* 8 C.F.R. § 103.5(a)(2). In addition, the Petitioner has not established that our previous decision that the appeal is moot because the Director approved the underlying petition was based on an incorrect application of law or policy and that it was incorrect based on the evidence then before us. *See* 8 C.F.R. § 103.5(a)(3). The petition remains approved and the appeal remains moot.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.