



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

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

In Re: 24058869

Date: JAN. 25, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a legal consultant, seeks employment-based second preference (EB-2) 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 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 record did not establish that the Petitioner qualifies for the national interest waiver. We dismissed the Petitioner's appeal from that decision in May 2022. The matter is now before us on a combined motion to reopen and reconsider under 8 C.F.R. § 103.5.

We may reopen the proceeding or reconsider our prior decision for proper cause shown. 8 C.F.R. § 103.5(a)(1)(i). 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 combined motion.

We incorporate by reference the "Law" section of our May 2022 decision, which describes the requirements for the national interest waiver.

On motion, the Petitioner states that we did not consider all the evidence that the Petitioner had submitted with the petition and, later, in response to a request for evidence. The Petitioner asserts that "those documents were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America."¹ The Petitioner asks that we "reconsider the adverse decision and reopen [the petition] and give full consideration on all the submitted documents."

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The Petitioner states no new facts on motion, and submits no new supporting evidence. Therefore, the motion does not meet the requirements of a motion to reopen. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

¹ The Fourth Amendment prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. The Petitioner appears to mean the Fifth Amendment, which guarantees "due process of law." U.S. Const. amend. V.

A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.*

The only decision properly before us on motion is our May 2022 appellate decision, not the Director's September 2021 denial of the petition. *See* 8 C.F.R. § 103.5(a)(1)(i), which limits the available time to file a motion to reconsider and requires that motions pertain to "the prior decision," which in this case is our May 2022 appellate decision.

In our appellate decision, we referred to the Petitioner's arguments, quoted from his "Professional Plan and Statement," and acknowledged his submission of supporting evidence including articles about Brazil's economy and "articles and industry reports [about] the U.S. legal services industry." We concluded:

Although the Petitioner's Professional Plan and Statement reflect his intention to create a legal consulting business, he has not offered sufficient information and evidence to demonstrate that . . . the Petitioner's proposed endeavor stands to sufficiently extend beyond his business and clientele to impact his field or the industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated . . . that his legal consultant business activities stand to provide substantial economic benefits in the United States . . . or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity.

On motion, the Petitioner does not address our specific determinations and conclusions or establish that they were in error. The Petitioner makes vague and general assertions that we disregarded unspecified evidence. Such assertions do not establish that our appellate decision was incorrect, and do not oblige us to readjudicate the appeal *de novo*. The Petitioner does not identify any specific documents or other pieces of evidence that we overlooked in our appellate review of the record, and the Petitioner does not explain how discussion or consideration of those materials would have changed the outcome of our May 2022 decision.

Because the Petitioner has not identified any erroneous application of law or policy, the motion does not meet the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3), and must be dismissed.

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal. We will dismiss the motion to reopen and motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.