



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

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

In Re: 25501166

Date: MAR. 29, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an architect, seeks second preference immigrant classification as a member of the professions holding an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.¹ The Petitioner filed a motion to reopen and reconsider directly to the service center, but the Director dismissed both motions for not identifying a new fact or incorrect application of law or policy.

The Petitioner then filed an appeal. We summarily dismissed the appeal as the Petitioner failed to submit its brief identifying any erroneous conclusion of law or statement of fact in the prior decision within 30 days of receiving the appeal. The matter is now before us on a motion to reopen.

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 motion to reopen.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A petitioner must meet the formal filing requirements in 8 C.F.R. § 103.5(1)(iii), such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee and accompanying brief. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

¹ The Director did not make a finding on whether the Petitioner meets the EB-2 classification of either having an advanced degree or having exceptional ability in the sciences, arts, and business. The Petitioner earned a bachelor's degree in architecture from [redacted] Universidad [redacted] in Colombia and there is a reliable credential evaluation attesting that this is an equivalent of a bachelor's degree in the United States. In addition, she has five plus years of experience in the area of her specialty as attested by employment letters. Therefore, we find that she qualifies for the EB-2 classification as a member of the professions holding an advanced degree. 8 C.F.R. § 204.5(k)(2).

The filing before us is a motion to reopen our summary dismissal of the appeal, as the scope of a motion is limited to review of “the prior decision.” *See* 8 C.F.R. § 103.5(a)(1)(i).

The Petitioner on motion claims that she submitted a brief and related evidence within 30 days of filing the appeal and provides a copy of USPS tracking label for a proof of delivery. The tracking label shows that the Petitioner incorrectly sent the brief and evidence to the filing location of Form I- 290B instead of sending them directly to our office. Any brief and/or additional evidence submitted after the initial filing of the I-290B must be submitted directly to the AAO. *See* 8 C.F.R. § 103.3(a)(2)(i) (the complete appeal including any supporting brief must be submitted as indicated in the applicable form instructions within 30 days after service of the decision) and 8 C.F.R. § 103.3(a)(2)(viii) (if additional time for the filing of a brief on appeal is given, the affected party shall submit the brief directly to the AAO); *see also* USCIS Form I-290B, Instructions for Notice of Appeal or Motion, at 6 (rev. 12/02/19) (“Any brief and/or additional evidence submitted after the initial filing of Form I-290B must be submitted directly to the AAO.”). As a result, the Petitioner failed to specifically address the Director’s reasons for denial in a timely manner, and we find that our decision to summarily dismiss the appeal was proper. 8 C.F.R. § 103.3(a)(1)(v).

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

ORDER: The motion to reopen is dismissed.