



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

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

In Re: 25690686

Date: MAR. 29, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks second preference immigrant classification as an advanced degree professional and/or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this employment-based, “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 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 a subsequent appeal. The matter is now before us on a motion to reconsider.

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 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 proceedings at the time of the decision. § 103.5(a)(3). By regulation, the scope of a motion is limited to “the prior decision.” 8 C.F.R. § 103.5(a)(1)(i). The filing before us is not a motion to reconsider the denial of the petition. It is a motion to reconsider our most recent decision, the dismissal of the Petitioner’s appeal. Therefore, we cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

Rather than address our dismissal of his appeal, the Petitioner generally asserts that “[t]he Service did not give full consideration to the evidence provided . . . along with the first filing and the NOID response, as should have been given” and is eligible for the requested classification. The Petitioner, therefore, has not specified the factual and legal issues raised on appeal that were decided in error or overlooked in our decision and we will dismiss the Petitioner’s motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3).

**ORDER:** The motion to reconsider is dismissed.