



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

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

In Re: 28981191

Date: NOV. 08, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a lawyer, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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. *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding the record did not establish 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 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.

A motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner contends we misapplied our precedent decision in *Dhanasar* to reassert their eligibility for an exercise of our discretion to waive the requirement of a job offer, and thus a labor certification, in the national interest. Specifically, the Petitioner asserts that their proposed endeavor's national importance is not dependent on demonstrating "an immediate or quantifiable economic impact." But whilst we said in *Dhanasar* that "an endeavor's merit may be established without immediate or quantifiable economic impact," we stated that we look to the potential prospective impact of a proposed endeavor when evaluating its national importance. In other words, we evaluate the proposed

endeavor's attributes to determine if they demonstrate a potential prospective impact from the endeavor's broader implications or positive economic effects rising to a level of national importance. So substantial positive economic impacts, such as a significant potential to employ U.S. workers particularly in an economically depressed area, can be a relevant factor to evaluate whether a proposed endeavor rises to a level of national importance.

And the Petitioner's motion essentially reasserts their previous contentions and describes their disagreement with the conclusions in our prior decision. Simply disagreeing with our conclusions without showing that we erred as a matter of law is not a ground to reopen or reconsider our decision. *See O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.