



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

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

In Re: 29865742

Date: JAN. 9, 2024

Motions on Administrative Appeals Office Decision

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

The Petitioner, an actuary who proposes to establish an insurance consulting firm in the United States, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer in this category - and thus a related requirement for certification from the U.S. Department of Labor - if a petitioner demonstrates that waiving these U.S.-worker protections would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition, and we dismissed the Petitioner's following appeal. *See In Re: 27415535* (AAO July 19, 2023). We affirmed the Director's finding that the Petitioner did not qualify for a national interest waiver because he did not demonstrate that his proposed endeavor has "national importance." *Id.*; *see also Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) (holding that, besides national importance, a petitioner for a national interest waiver must demonstrate that: their venture has "substantial merit;" they are "well positioned" to advance it; and, on balance, a waiver would benefit the United States).

The matter returns to us on the Petitioner's combined motions to reopen and reconsider. He contends that we "did not give due regard" to his evidence, thereby violating his constitutional rights.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that his motion to reopen does not meet applicable requirements and that his motion to reconsider does not demonstrate our misapplication of law or policy, or his eligibility for the requested benefit. We will therefore dismiss the motions.

## I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must demonstrate that our prior decision misapplied law or policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). Limiting our review to our latest decision, we may grant motions that satisfy these requirements and demonstrate eligibility for

the requested benefit. 8 C.F.R. § 103.5(a)(1)(ii); *see also Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring new evidence to potentially change a case's outcome).

## II. ANALYSIS

### A. The Motion to Reopen

The Petitioner's motion to reopen neither states new facts nor includes documentary evidence. *See* 8 C.F.R. § 103.5(a)(2). As the motion does not meet applicable requirements, we must dismiss it. *See* 8 C.F.R. § 103.5(a)(4).

### B. The Motion to Reconsider

The Petitioner's motion to reconsider contends that our prior decision misanalyzes evidence of his proposed endeavor's national importance. He asserts that our errors "violat[e] the Fourth Amendment of the Constitution of the United States of America as Petitioner provided timely and proper notice to his RFE response to USCIS."

The Petitioner's motion neither specifies how we purportedly misanalysed his evidence nor identifies which materials demonstrate the claimed national importance of his proposed endeavor. The motion therefore neither establishes our prior decision's misapplication of law or policy nor his eligibility for the requested benefit.

Also, the record does not support the Petitioner's constitutional allegation. The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The amendment also requires issuance of warrants based on "probable cause, support by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The record does not demonstrate that, in these petition proceedings, USCIS searched or seized - or issued warrants to search or seize - the Petitioner or his property. Thus, the allegation is unfounded.

## III. CONCLUSION

The motion to reopen does not comply with applicable requirements. The motion to reconsider does not demonstrate our prior decision's misapplication of law or policy, or the Petitioner's eligibility for the requested benefit.

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

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