



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

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

In Re: 29526704

Date: JAN. 16, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a restaurant manager and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish his eligibility for the EB-2 classification as an individual of exceptional ability. The Director also determined that the Petitioner did not merit a national interest waiver as a matter of discretion. We summarily dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and 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 reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

We summarily dismissed the Petitioner's appeal of the Director's decision because it did not state that the decision was based on an erroneous conclusion of law. In addition, we noted that despite checking the box on Form I-290B, Notice of Appeal or Motion, indicating that it would submit a brief within 30 days of filing the appeal, a brief was not received by the date of our decision, June 27, 2023. On motion, the Petitioner submits a statement asserting that he did submit a brief within 30 days of filing his appeal [REDACTED]. He also submits a tracking receipt from the U.S. Postal Service that shows that a delivery sent from the address he used on Form I-290B was received at the U.S. Citizenship and Immigration Services (USCIS) lockbox on April 6, 2023.

This evidence is insufficient to overcome our summary dismissal. We first note that the tracking receipt shows that this mailing was sent by a person and business using the same address as the Petitioner uses on Form I-290B, but with no connection to or standing in the petition or appeal. It also includes no reference to the Petitioner, his petition, or his appeal. The tracking receipt therefore does not show that the Petitioner submitted a brief in support of his appeal. In addition, USCIS records do not reflect that an appeal brief for [REDACTED] was received on that date, or even as of the date of this motion decision, and we note that the Petitioner did not include a copy of the brief he asserts that he submitted. As the Petitioner's appeal did not include a statement identifying an erroneous conclusion of law in the Director's decision, it was properly summarily dismissed, and this new evidence does not overcome that dismissal or demonstrate eligibility for the requested benefit.

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. Here, we dismiss the Petitioner's motion to reconsider, as his statement does not identify a law or policy that we misapplied or establish that our decision was incorrect based on the record at the time.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.