



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

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

In Re: 28918521

Date: OCT. 30, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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 Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (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).

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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In our decision summarily dismissing the Petitioner's appeal, we stated that his submission did not identify specifically any erroneous conclusion of law or statement of fact in the Director's decision.

Further, while the Petitioner indicated that a brief and/or additional evidence would be submitted to the AAO within 30 calendar days of filing the appeal, the record did not show that he submitted those materials within that period. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.2(a)(1)(v).

On motion, the Petitioner submits what he claims is the United States Postal Service (USPS) Click-N-Ship Label Record indicating that his brief and/or additional evidence was sent to USCIS in April 2023.¹ In the “From” section, the April 2023 label record lists ‘[REDACTED]’ with a “Ref#” identifying the name of an individual different from the Petitioner.² The Petitioner asserts that our summary dismissal was in error because he sent further documentation in support of his appeal in April 2023.

The Petitioner, however, did not submit evidence (such as a delivery confirmation receipt from USPS) showing that USCIS ever received his supplemental appellate documentation in April 2023. Furthermore, USCIS records do not contain the documents Petitioner claims to have sent. Moreover, the Petitioner did not provide a copy of the supplemental appellate documentation in support of the combined motions.

The Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for our summary dismissal decision. Moreover, he has not demonstrated that our appellate decision was based on an incorrect application of law or USCIS policy, or that it was incorrect based on the evidence in the record at the time of our decision.

The Petitioner has not established new facts relevant to our summary dismissal that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reopening or reconsideration of our appellate decision. Accordingly, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner’s appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

¹ The Petitioner’s motion also includes the United States Postal Service Click-N-Ship Label Record dated February 2023 from the initial filing of his appeal. This label record indicated that the initial appellate submission was sent from ‘[REDACTED]’ with a “Ref#” listing the Petitioner’s name.

² The “Ref#” lists ‘[REDACTED]’ instead of the Petitioner; ‘[REDACTED]’ is crossed out and the Petitioner’s name is handwritten underneath.