



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

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

In Re: 29156346

Date: DEC. 04, 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 a member of the professions holding an advanced degree, 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 Service Center denied the petition, concluding the evidence in the record did not support a waiver of the required job offer, and thus of a labor certification, would be in the national interest. We 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). *See also 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). 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.

We conclude that the Petitioner's objections generally alleging that we erred in dismissing their appeal without identifying any specific errors on our part in doing so are insufficient to reopen or reconsider our previous decision. The Petitioner also states that we did not consider all the evidence that they submitted in support of the petition. The Petitioner requests that we reopen or reconsider "the adverse decision [on your] Form I-140 and...give full consideration on all the submitted documents." The Petitioner does not, however, explain with any specificity how we failed to "give full consideration" in our decision dismissing the appeal. To reopen the previous proceedings, the Petitioner must state new facts supported by documentary evidence demonstrating a potential to change the outcome. *See Matter of Coelho*, 20 I&N Dec. at 473. And to establish merit for reconsideration of our latest decision,

the Petitioner must both state the reasons why they believe the most recent decision was based on an incorrect application of law or policy and must also specifically cite the laws, regulations, precedent decisions, and/or binding policies they believe we misapplied in our prior decision. A petitioner cannot meet the requirements of a reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. at 56-58 (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision).

The Petitioner also alleges that their previously submitted documents “were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America.” The Fourth Amendment in part prohibits “unreasonable searches and seizures.” U.S. Const. amend. IV. We conclude the Petitioner’s citation to the Fourth Amendment is not relevant to the matter at hand as they have not explained how we violated the Fourth Amendment in dismissing their appeal. Citing to an authority that is not relevant to the grounds of the unfavorable decision will not meet the requirements of a motion to reconsider. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (“A motion to reconsider is not a mechanism by which a party may file a new brief before the Board raising additional legal arguments that are unrelated to those issues raised before the Immigration Judge and on appeal.”).

The Petitioner has not submitted additional evidence in support of the motion to reopen nor have they established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.