



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

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

In Re: 28999349

Date: NOV. 1, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an architect, seeks classification as a member of the professions holding an advanced degree. *See* 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 EB-2 immigrant 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.

The Director of the Texas Service Center denied the petition. The Director concluded the Petitioner qualified as an advanced degree professional, but further determined she did not demonstrate her proposed endeavor would be in the national interest of the United States. The Director also concluded that the Petitioner did not establish she was well positioned to advance her proposed endeavor or that it would be beneficial to the United States to waive the requirements of a job offer and labor certification. We dismissed a subsequent appeal. We concluded the record did not establish that the proposed endeavor would have national importance, as required by the first *Dhanasar* prong, and we reserved the remaining *Dhanasar* prongs. *See Dhanasar*, 26 I&N Dec. 884, 888-91 (AAO 2016), for elaboration on these three prongs. The matter is now before us on a combined motion to reopen and 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 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).

On motion to reopen, the Petitioner submits a cover letter, a brief, USCIS forms, and copies of information already in the record. However, the Petitioner neither states a new fact on motion nor

supports such a fact by documentary evidence. Therefore, because the motion does not satisfy the requirements of a motion to reopen, it will be dismissed. *See* 8 C.F.R. § 103.5(a)(2), (a)(4).

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 to reconsider, the Petitioner contests the correctness of our prior decision. Specifically, the Petitioner asserts, “The reasons given in the dismissal are without factual basis and do not follow the proper legal requirements.” The Petitioner further asserts that she “has met all three prongs of *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).” The Petitioner does not identify on motion any other law or policy she believes our prior decision incorrectly applied. Moreover, she does not elaborate on how our prior decision incorrectly applied *Dhanasar*, other than reasserting that she believes the record satisfies the *Dhanasar* framework. We incorporate by reference our prior analysis of why the record does not satisfy the first *Dhanasar* prong, as required.

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, because the motion does not satisfy the requirements of a motion to reconsider, it will be dismissed. *See* 8 C.F.R. § 103.5(a)(3), (a)(4).

We note that the Petitioner further states on motion that she “wants to give the AAO an opportunity to reconsider its dismissal by reviewing the Certification Request by USCIS . . . and the Petitioner’s response to that Certification Request dated January 11, 2023.” However, because the certification request and the Petitioner’s response thereto are not the subject of our prior decision, they are beyond the scope of review for the combined motion. *See* 8 C.F.R. § 103.5(a)(1)(ii) (limiting motions to “the latest decision in the proceeding”). We further note that we decline to reopen or reconsider the certification request on our own motion. *See* 8 C.F.R. § 103.5(a)(5) (providing the framework for *sua sponte* motions).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.