



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

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

In Re: 29022798

Date: NOV. 17, 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) and *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding 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 motion to reopen.

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, the Petitioner submits a new business plan for a different endeavor entity, [redacted] [redacted] accompanied by a copy of their resume, an academic evaluation with translation, a personality test result, a Department of Labor news release corresponding to the weekly unemployment insurance claims for the week ending June 10, 2023, an identity card issued by the Regional Administration Council of [redacted] Brazil, identifying the Petitioner as an administrator, copies of proposed and unenacted legislation originating in the U.S. Senate and U.S. House of Representatives and news articles/blogs pertaining to small businesses. The Petitioner asserts that these are new facts establishing their eligibility for a national interest waiver of the job offer requirement attached to this EB-2 classification. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(91), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The Petitioner's entity, [redacted] did not exist at the time they filed their immigrant petition. USCIS cannot "consider facts that come into being only subsequent to the filing of a

petition.” See *Matter of Izummi*, 22 II&N Dec. 169, 176 (Comm’r 1998). Moreover, at the time the Petitioner filed their petition, they intended to establish a cleaning service for commercial entities and residences. The Petitioner’s new entity would purportedly operate in the field of business consulting, which is unrelated to the field of residential and commercial cleaning the Petitioner proposed to endeavor to undertake as they sought a national interest waiver of the job offer requirement attached to this EB-2 classification. A petitioner must identify the specific endeavor they propose to undertake at the time of filing. See *Matter of Dhanasar*, 26 I&N Dec. at 889. The *Dhanasar* framework cannot be applied to two dueling proposed endeavors. And there is no provision in the regulations or in the *Dhanasar* framework providing for the substitution of a proposed endeavor. So, the Petitioner’s new facts supported by evidence do not demonstrate their eligibility for a national interest waiver of the job offer requirement attached to this EB-2 classification.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the evidence does not meet the requirements of new evidence supporting reopening these proceedings and the Petitioner has not established eligibility for the requested benefit. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.