



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

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

In Re: 23349378

Date: DEC. 16, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that she had not established eligibility for a national interest waiver. We dismissed the Petitioner's subsequent appeal and two subsequent combined motions.

The matter is now before us again on a third combined motions to reopen and reconsider. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motions.

I. MOTION TO RECONSIDER

A motion to reconsider must establish that our 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3).

The filing before us does not entitle the Petitioner to a reconsideration of the denial of the petition. Rather, a motion to reconsider pertains to our most recent decision. Therefore, we cannot consider new objections to the Director's denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

The Petitioner continues to assert that she is eligible for a national interest waiver. However, she does not contend that our last decision was based on an incorrect application of law or policy or that our decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must be dismissed.

II. MOTION TO REOPEN

By regulation, the scope of a motion is limited to “the prior decision.” 8 C.F.R. § 103.5(a)(1)(i). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323, (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)); see also *Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. *INS v. Abudu*, 485 at 107.

Based on its discretion, USCIS “has some latitude in deciding when to reopen a case” and “should have the right to be restrictive.” *Id.* at 108. Granting motions too freely could permit endless delay when foreign nationals continuously produce new facts to establish eligibility, which could result in needlessly wasting time attending to filing requests. See generally *INS v. Abudu*, 485 U.S. at 108. The new facts must possess such significance that, “if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case.” *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); see also *Maatougui v. Holder*, 738 F.3d 1230, 1239–40 (10th Cir. 2013). Therefore, a party seeking to reopen a proceeding bears a “heavy burden.” *INS v. Abudu*, 485 at 110. With the current motion, the Petitioner has not met that burden.

In the current motion, the Petitioner does not offer any new evidence or facts. She references previous assertions and explanations relating to her eligibility for a national interest waiver. As we have already analyzed these in our prior decisions, we conclude that the Petitioner has not shown proper cause for reopening the proceedings.

III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsidering our prior decision, nor has she established eligibility for the benefit sought.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.