



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

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

In Re: 26982375

Date: MAY 12, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a civil engineer, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business. *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. 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, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. We dismissed the Petitioner's appeal from the Director's decision in January 2023. The matter is now before us on a motion to reconsider under 8 C.F.R. § 103.5.

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.

We incorporate by reference the "Law" section of our January 2023 decision, which describes the requirements for the national interest waiver.

On motion, the Petitioner states that USCIS did not consider all the evidence that the Petitioner had submitted with the petition and, later, in response to a notice of intent to deny (NOID). The Petitioner asserts that she "provided timely and proper notice [in her] NOID response," but "those documents were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America."¹ The Petitioner asks that we "reconsider the adverse decision [on the] Petitioner's Form I-140 and give full consideration on all the submitted documents."

A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to

¹ The Fourth Amendment in part prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. The Petitioner appears to mean the Fifth Amendment, which guarantees "due process of law." U.S. Const. amend. V.

reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The only decision properly before us on motion is our January 2023 appellate decision, not the Director's November 2021 denial of the petition. *See* 8 C.F.R. § 103.5(a)(1)(i), which limits the available time to file a motion to reconsider and requires that motions pertain to "the prior decision," which in this case is our January 2023 appellate decision.

In our appellate decision, we referred to the Petitioner's arguments, quoted from the description of the Petitioner's proposed endeavor, and acknowledged the submission of "evidence including reports about civil engineers in general and the state of the construction industry in the United States." We also specifically discussed the response to the NOID, stating that the Petitioner "proposed a new endeavor" and submitted "a business plan for the Petitioner's newly created company." We stated:

The Petitioner . . . asserts in both her NOID response and on appeal that her proposed endeavor will "lead to an enhanced and improved construction and development," "generate both economic and social value for the United States," and "result in the production of U.S. jobs." . . . While that statement indicates that her work will "contribute to access to innovation," it does not describe the ways in which her endeavor or her company will create and deploy innovations that will have broader implications for the construction industry in the United States. While the plan describes the use of existing computer technology and social media to advance the Petitioner's business, it does not demonstrate that these practices would impact the field beyond the company and its clients.

. . . [The Petitioner's] business plan . . . does not demonstrate that the Petitioner's business will have an impact on the construction industry or the U.S. economy at a level commensurate with national importance. In addition, the record does not indicate that the location of the business and its proposed operations is an economically depressed area, or that the endeavor would otherwise have substantial positive economic effects.

On motion, the Petitioner does not address our specific determinations and conclusions or establish that they were in error. The Petitioner makes vague and general assertions that we disregarded evidence in the record, but the Petitioner does not identify any specific documents or other pieces of evidence that we overlooked in our appellate review of the record. The Petitioner does not explain how discussion or consideration of those materials would have changed the outcome of our January 2023 decision.

The Petitioner has not identified any erroneous application of law or policy, and has not shown that our January 2023 decision was incorrect based on the evidence then in the record. Therefore, the motion does not meet the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3), and must be dismissed.

ORDER: The motion to reconsider is dismissed.