



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

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

In Re: 27098448

Date: MAY 12, 2023

Motion on Administrative Appeals Office (AAO) Decision

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

The Petitioner, a statistician, seeks second preference immigrant classification, 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 Petitioner had not established eligibility for a national interest waiver under the Dhanasar framework. We dismissed the subsequent appeal, concluding the Petitioner had not overcome the Director's finding regarding the national importance of the proposed endeavor. The matter is now before us on a motion to reconsider. The Petitioner continues to assert she is eligible for a national interest waiver and submits a letter in support. 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 motion to reconsider.

A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reconsider to instances where the petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I 290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

The scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has established that our decision to dismiss the prior appeal was based on an incorrect application of law or USCIS policy. We therefore incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

The Petitioner's motion letter states:

The Service did not give full consideration to the evidence provided by the Petitioner along with the first filing and the RFE response, as it should be given. In fact, the documents listed by the Service in the denial letter are proof that the Petitioner has presented all the necessary documents along with the filing and RFE response, but those documents were not properly analyzed by the Service, violating the Fourth Amendment of the Constitution of the United States of America as Petitioner provided timely and proper notice to his RFE response and to USCIS. In addition, the Service disregarded the fact that the Petitioner is a highly skilled STEM professional, and that waiving the requirement of a job offer and, thus, a labor certification, would benefit the United States. Such waiver is clearly aligned with the best interests of the country, as it may – and certainly will – help the U.S. to regain competitiveness in comparison to other countries. . . . [T]he Service denial of this petition is contrary to law or policy, and unsupported by the evidence of record. Consequently, the Petitioner respectfully requests for the Service to reconsider the adverse decision and reopen the Petitioner's Form I-140 and give full consideration on all the submitted documents.

A motion to reconsider pertains to our most recent decision. In other words, we examine any new arguments to the extent that they pertain to our prior dismissal of the Petitioner's appeal. We cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding. Therefore, we do not address the Petitioner's assertions of error in the Director's decision, as the filing before us does not entitle the Petitioner to a reconsideration of the denial of the petition.¹

The assertion that "the Service" disregarded how "waiving the requirement of a job offer and, thus, a labor certification, would benefit the United States" is not a sufficiently specific statement as to how the AAO erred as a matter of law or policy and therefore it does not meet the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3). Likewise, the Petitioner's opinion that a waiver "is clearly aligned with the best interests of the country, as it may – and certainly will – help the U.S. to regain competitiveness in comparison to other countries" is silent as to how we erred. Therefore, these statements lack the specificity required for a motion to reconsider. The Petitioner cannot meet the requirements of a motion to 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. 56, 58 (BIA 2006) (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).

Although "the Service disregarded the fact that the Petitioner is a highly skilled STEM professional" may be more specific, it still does not identify how we disregarded the Petitioner's skill or how we erred as a matter of law or policy. Our prior decision acknowledged the Petitioner's education, skills, and knowledge in the field.² Therefore, even if the assertion was sufficiently specific as to how we erred, we would still find no error in our prior decision.

¹ The Petitioner's use of a general term, "the Service," does not differentiate between the actions of the Texas Service Center or the AAO.

² Specifically, our prior decision explained that these factors relate to the second prong of the Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016) precedent decision.

For the foregoing reasons, the Petitioner has not shown that our prior decision contained errors of law or policy, or that the 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.

ORDER: The motion to reconsider is dismissed.