



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

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

In Re: 28334129

Date: AUG. 28, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a general and operations manager, seeks employment-based second preference (EB-2) classification as a member of the professions holding an advanced degree, as well as 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).

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner established he qualifies for EB-2 classification as professional holding an advanced degree, he did not establish that a waiver of the required job offer, and thus of the labor certification would be in the national interest. We summarily dismissed the Petitioner's subsequent appeal concluding that he did not specifically identify any erroneous conclusion or law or statement of fact in the unfavorable decision as a basis for the appeal. The matter is now before us on motion 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 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.

In our previous decision summarily dismissing the Petitioner's appeal, we emphasized that the appellate brief had been copied verbatim from former counsel's letter in response to a request for evidence (RFE) and was accompanied by evidence that was an exact copy of the Petitioner's RFE response. The Petitioner added that he was requesting "further analysis" of his case but did not address the specific findings in the Director's denial. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.2(a)(1)(v).

On motion, the Petitioner explains that he resubmitted his RFE response in support of the appeal for “further analysis” because he believed he was qualified for the requested benefit and hoped our office would review the evidence and reverse the Director’s decision. The Petitioner now provides a more extensive brief and additional evidence addressing the Director’s specific findings with respect to his eligibility for the requested benefit under *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), which provides the framework for adjudicating national interest waiver petitions.

Although the Petitioner acknowledges the specific findings that resulted in our decision to summarily dismiss his appeal, he does not contend that our previous decision was based on an incorrect application of law or policy or that it was incorrect based on the evidence in the record at the time of our decision. The Petitioner has therefore not overcome our determination that summary dismissal was the proper, and required, outcome under 8 C.F.R. § 103.2(a)(1)(v) when presented with an appeal that contained no specific allegations of error in fact or law.

The Petitioner’s remaining arguments on motion relate to the merits of his immigrant petition and his belief that the Director erroneously denied that petition. The Petitioner’s opportunity to allege specific errors in the Director’s denial decision was on appeal. Absent a demonstration that we summarily dismissed his appeal in error, we need not reach the merits of the underlying petition here.

For the reasons discussed, 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, and therefore has not shown proper cause for reconsideration. The motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.