



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

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

In Re: 29223742

Date: DEC. 27, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an information technology (IT) entrepreneur, seeks classification as a member of the professions holding an advanced degree. *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 Petitioner did not establish: (1) the national importance of his proposed endeavor, and (2) that, on balance, the United States would benefit from waiving the job offer requirement. We dismissed a subsequent appeal. The matter is now before us on a 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the Petitioner submits a revised business plan and background information about artificial intelligence and related technologies. The Petitioner asserts that these new facts establish eligibility, by demonstrating the national importance of the Petitioner's proposed endeavor in the United States.

Any motion to reopen filed by a petitioner must be filed within 30 days of the decision that the motion seeks to reopen, but we have discretion to excuse untimely filing if the petitioner demonstrates that the delay was reasonable and was beyond the petitioner's control. 8 C.F.R. § 103.5(a)(1)(i).

We dismissed the Petitioner's appeal on May 2, 2023. The Petitioner filed the present motion more than two months later, on July 5, 2023. On motion, the Petitioner shows that he did not receive our dismissal notice at his overseas address until June 8, 2023, by which time the deadline for filing a motion had passed. He asks that we excuse the untimely filing of the motion as permitted by 8 C.F.R. § 103.5(a)(1)(i).

The Petitioner has not established that we did not properly issue the appellate decision. Routine service consists of mailing the notice by ordinary mail addressed to the affected party and his or her attorney or representative of record at his or her last known address. 8 C.F.R. § 103.8(a)(1)(i). When we dismissed the Petitioner's appeal, we sent copies of the dismissal decision by regular mail to the Petitioner and to the Petitioner's then-attorney of record, at the addresses provided for both. There is no evidence, and the Petitioner does not claim, that the attorney's copy was delayed or returned as undeliverable.¹ Therefore, the record before us indicates that we issued the dismissal notice to the Petitioner and the Petitioner's then-attorney of record. Therefore, we do not find that circumstances beyond the Petitioner's control prevented him from filing a timely motion.

Because the Petitioner's motion does not meet the timeliness requirement at 8 C.F.R. § 103.5(a)(1)(i), and the dismissal notice was properly issued to the Petitioner and his attorney of record, we must dismiss the motion. *See* 8 C.F.R. § 103.5(a)(4), which requires dismissal of a motion that does not meet applicable requirements.²

ORDER: The motion to reopen is dismissed.

¹ On motion, the Petitioner does not mention his prior attorney at all or establish what communication, if any, he received from that attorney after we dismissed the appeal. He does not assert that his attorney did not receive the copy timely or that his attorney did not inform him of the dismissed appeal to him in a timely fashion.

² Furthermore, the Petitioner has not established that he would have prevailed on the merits. The Petitioner states that the Director's request for evidence, the Director's denial decision, and our appellate decision all disregarded the Petitioner's emphasis on business intelligence. The scope of the motion is limited to the appellate decision, which is "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii).

The Petitioner seeks to introduce new facts in the form of a revised business plan that contains more information about the services that his company would provide to customers. In our dismissal notice, we acknowledged that customers would benefit from the company's services, but concluded that the Petitioner had not shown that his proposed endeavor would have a broader impact on the IT field. We also concluded that the Petitioner's assertions about job creation appeared to be conjectural. More details about his company's services do not overcome these deficiencies.

Other materials submitted on motion amount to background information about IT and entrepreneurship, which is not specific to the proposed endeavor by which the Petitioner seeks to establish eligibility for the benefit he seeks.