



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

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

In Re: 33398372

Date: SEP. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a speech therapist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this 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 that the record did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner filed a motion to reopen and reconsider, and the Director subsequently denied that motion. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. 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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. Our precedent decision, *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions.

As noted, the Director previously found although the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree, but she did not establish that a waiver of the required job offer would be in the national interest. The Director then dismissed the Petitioner's motion to reopen and reconsider that decision, finding the motion was untimely filed.

On appeal, the Petitioner contends the Director erroneously dismissed her motion without rendering a decision on its merits because they did not consider her motion under the applicable COVID-19-

related flexibilities to the filing deadlines. Specifically, she cites the U.S. Citizenship and Immigration Services (USCIS) policy guidance issued on January 24, 2023, which extended those flexibilities related to the filing of the Form I-290B, Notice of Appeal or Motion. That release of policy guidance states “USCIS will consider a Form I-290B . . . if: [t]he form was filed up to 90 calendar days from the issuance of a decision we made; and [w]e made that decision between Nov. 1, 2021, and March 23, 2023, inclusive.” *See* USCIS Alert, “USCIS Extends COVID-19-related Flexibilities”, (Jan. 24, 2023), <https://www.uscis.gov/newsroom/alerts/uscis-extends-covid-19-related-flexibilities-1>. Here, the Director issued the decision denying the petition on December 12, 2022, and the Petitioner filed her Form I-290B and motion with the Director on February 8, 2023 – 59 days after the adverse decision. As such, her motion should have been considered timely filed under the USCIS policy at the time of filing, which allowed up to 90 calendar days for the filing of such motions. Therefore, we agree with the Petitioner’s assertion on appeal that the Director incorrectly dismissed her motion as untimely filed. We will withdraw the Director’s decision and remand the matter for entry of a full decision on the merits of the motion.

**ORDER:** The Director’s decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.