U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32293694

Date: AUG. 19, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a marketing manager, seeks second preference immigrant classification as an advanced degree professional and 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 that the Petitioner did not establish eligibility for a national interest waiver. We summarily dismissed a subsequent appeal and dismissed a subsequent motion to reconsider. The matter is now before us on a combined motion to reopen and 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 both motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In this second motion, the Petitioner again contests the correctness of our prior decisions where we summarily dismissed her appeal because a brief was not timely received after the filing of the appeal and then dismissed her subsequent motion. In her initial motion, the Petitioner asserted that a brief and supporting evidence was filed timely. The Petitioner submitted a United Parcel Service or UPS delivery notification dated August 11, 2022, for a shipment presumably containing the appeal brief, sent from the law firm of the Petitioner's attorney to [redacted] Maryland, which is not the correct filing address for an after-filed appeal brief, but appears to be a private industry office space. Unlike the Form I-290B itself, an after-filed appeal brief should be sent directly to the AAO. *AAO Practice Manual*, Chapter 3.8. https://www.uscis.gov/administrative-appeals/aao-practice-manual/. In the current motion to reopen and reconsider the Petitioner submits the same

evidence and indicates, without citing to law or policy, that she cannot be held responsible for a third-party courier error and to do so is a violation of her due process rights. We will again dismiss the motions.

The record shows that the reason the appeal brief was untimely filed is because the Petitioner did not properly file the brief at the appropriate address. Although, on motion it is claimed that this was a UPS error, no documentation has been provided to support that claim in full. For example, it is unclear if the error was UPS' error or a clerical mistake at the attorney's office. In addition, unfortunately, even if the mistaken delivery address was a third-party error, it would not negate that the brief was not timely filed. Further, the appeal appears to have been filed on July 13, 2022, giving the Petitioner 30 days or until August 12, 2022, to file the appeal brief with the correct address. According to the Petitioner's UPS delivery notification, the brief was delivered to the incorrect address on August 11, 2022, at 7:51AM, giving the Petitioner one day to correct the error and have the brief timely delivered to the correct address, which she did not do. We also acknowledge the Petitioner's claim on motion that our decisions are in violation of her due process rights. However, we cannot address arguments on the constitutionality of laws enacted by Congress or on regulations. *See, e.g., Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) (holding that the Immigration Judge and Board of Immigration Appeals lacked jurisdiction to rule upon the constitutionality of the Act and its implementing regulations); *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 339 (BIA 1991) ("It is well settled that it is not within the province of this Board to pass on the validity of the statutes and regulations we administer.") (citations omitted). Likewise, we cannot waive or disregard any of the Act's requirements, as implemented by regulation. *See United States v. Nixon*, 418 U.S. 683, 695 (1974) ("So long as this regulation is extant it has the force of law.").

Moreover, in the absence of an appeal brief and in review of the initial reasons provided on the Form I-290B for the appeal, we affirm our prior decisions. In Part 7 of the Form I-290B filed on appeal, the Petitioner contends generally that she is eligible for a national interest waiver and that all the evidence was not objectively evaluated under the proper evidentiary standard of preponderance of the evidence. She then asserts that she will demonstrate other aspects of her petition in her brief. As stated above, the standard of proof for a national interest waiver is preponderance of the evidence. *Chawathe* at 375-376. However, in putting forward the argument that the Director did not correctly apply this standard, the Petitioner does not explain how the standard was wrongly applied. The Petitioner does not support this assertion with specificity as to the record or to the Director's conclusions. The Petitioner's general objections on appeal regarding her eligibility for the national interest waiver did not specifically identify any erroneous conclusion of law or statement of fact in the Director's decision, thus a summary dismissal was warranted. 8 C.F.R. § 103.3(a)(1)(v).

Because the Petitioner has not presented new facts, her motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4). Similarly, because the Petitioner has not established that our prior decision to dismiss the appeal was incorrect based on the evidence in the record of proceedings at the time of the decision we will dismiss the motion to reconsider. *Id.*

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.