U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35497241

Date: DEC. 09, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a chief executive in the field of orthopedic medicine, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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. The Director concluded that although the Petitioner is an advanced degree professional, he did not establish his eligibility for a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Specifically, the Director determined that while the Petitioner had demonstrated that his endeavor was of substantial merit and that he was well-positioned to advance his endeavor, the Petitioner had not demonstrated his endeavor was of national importance or that on balance waiving the job offer requirement would benefit the United States. We summarily dismissed a subsequent appeal as the Petitioner did not timely submit a brief and/or additional evidence to us within 30 calendar days of the filing of his appeal. Additionally, the Petitioner did not provide a basis statement that identified any specific erroneous conclusions of law or statements of fact in the denial.

The matter is now before us on combined motions to reopen and reconsider. 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). 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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). On motion, the Petitioner claims that he timely filed his brief with us and submits a copy of a UPS package tracker status page as proof of delivery. He further claims that the "error lies solely with USCIS, which failed to correctly process the received materials." However, the shipping material provided shows that the Petitioner misfiled his brief to an incorrect address. The regulation at 8 C.F.R. § 103.3(a)(2)(i) states that, "The affected party must submit the complete appeal including any supporting brief as indicated in the applicable form instructions within 30 days after service of the

decision." If the AAO "grants additional time, the affected party shall submit the brief directly to the [AAO]." 8 C.F.R. § 103.3(a)(2)(viii). Every form, benefit request, or other document must be executed in accordance with the instructions on the form, which are incorporated into the regulation requiring its submission. 8 C.F.R. § 103.2(a)(1).

According to Form I-290B's instructions for appeals, **"[a]ny brief and/or evidence submitted after you file Form I-290B must be sent directly to the AAO**, even if the appeal has not yet been transferred to the AAO." [Emphasis in original].[1] Instead of filing his brief to the AAO's office as instructed, the Petitioner sent his brief to the mailing location specified in the instructions for the initial filing of the Form I-290B. Thus, the Petitioner's brief was improperly submitted to the wrong location and not before us when we adjudicated his appeal. Since there was no brief, and the record contained no other basis statement, we summarily dismissed his appeal. Because the Petitioner does not submit new evidence on motion sufficient to demonstrate that his appeal should not have been summarily dismissed, we find no basis to disturb our decision.

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).

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion to reconsider, the Petitioner relies on the UPS package tracking information and contends that he submitted sufficient evidence to demonstrate we erred in summarily dismissing his appeal. However, as discussed above, the UPS shipping information undercuts the Petitioner's argument as it demonstrates that he submitted his appeal brief to an incorrect address. Instead of filing his brief with the AAO as the Form I-290B instructions expressly require, the Petitioner filed his brief with the USCIS Phoenix Lockbox' address for FedEx, UPS, and DHL deliveries. As the Petitioner did not follow the required form instructions, the brief did not reach the AAO, and the appeal was properly summarily dismissed. Therefore, the motion to reconsider must be dismissed.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, 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. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] USCIS, "Instructions for Notice of Appeal or Motion," https://www.uscis.gov/sites/default/files/document/forms/i-290binstr.pdf.