U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35406956

Date: DEC. 13, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an international marketing innovation executive, seeks second preference immigrant classification, 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 Nebraska Service Center denied the petition, concluding that the Petitioner had not established 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 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 U.S. Citizenship and Immigration Services (USCIS) 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)(l)(ii). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested benefit.

In our August 2024 summary dismissal decision, we stated that the Petitioner's appeal did not identify specifically any erroneous conclusion of law or statement of fact in the Director's decision. Further, while the Petitioner indicated that a brief and/or additional evidence would be submitted to the AAO within 30 calendar days of filing the appeal, the record did not show that the AAO received those materials within that period. Instead, the Petitioner's motion indicates that its appeal brief was incorrectly sent to Tempe, Arizona rather than the AAO. Any appeal brief and/or evidence submitted after filing the Form I-290B, Notice of Appeal or Motion, must be sent directly to the AAO as required by the regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the filing instructions for the Form I-290B. Because the AAO did not receive the appeal brief, and the Petitioner's appellate submission did not identify specifically any erroneous conclusion of law or statement of fact, we summarily dismissed the appeal. See 8 C.F.R. § 103.3(a)(l)(v).

On motion, the Petitioner presents a copy of its April 2024 appeal brief and a FedEx tracking receipt showing that the brief was incorrectly sent to Tempe, Arizona rather than the AAO.[1] The Petitioner asks that we consider the arguments presented in its legal brief challenging the Director's March 2024 decision.

The only decision properly before us on motion is our August 2024 appellate decision, and not the Director's March 2024 denial of the petition. *See* 8 C.F.R. § 103.5(a)(l)(i), (ii), requiring that motions pertain to "the prior decision" or "the latest decision," which in this case is our August 2024 decision. While we acknowledge the Petitioner's assertion that the information pertaining to where to submit an appeal brief and/or evidence after filing the Form I-290B was confusing, as noted the requirements regarding the submission of such documents are clearly stated in the regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the filing instructions for the Form I-290B. Because the Petitioner did not follow the form's instructions regarding where to submit the appeal brief, we conclude that our decision to summarily dismiss the appeal was a correct one. In other words, our determination that the record lacked an appeal brief was correct. The Petitioner therefore has not demonstrated that our summary dismissal decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision.

The Petitioner has not shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reconsideration of our decision. Accordingly, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.

[1] The tracking receipt shows a delivery date of May 3, 2024.