U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35108121

Date: FEB. 10, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner was not qualified for the EB-2 visa classification as an advanced degree professional and he had not established eligibility for the national interest waiver. We summarily dismissed the appeal. The matter is now before us as combined motions to reopen and to reconsider. 8 C.F.R. § 103.5(a)(2)-(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). Upon review, we will dismiss the combined 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).

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

The Petitioner timely filed an appeal in May 2024, which we summarily dismissed in July 2024 because the Petitioner did not identify specifically any legal or factual error in the Director's decision on his Form I-290B, Notice of Appeal or Motion, and did not submit his appeal brief and/or additional evidence to us within 30 days of filing the appeal as he indicated on his Form I-290B.

On motion, the Petitioner asserts that we erred in summarily dismissing his appeal because he submitted a brief, which was delivered in May 2024. He submits a copy of the appeal brief he previously sent to the Phoenix Lockbox and a receipt indicating a delivery was made on May 24, 2024, to Tempe, Arizona. However, the Petitioner indicated on the Form I-290B submitted on appeal that he would submit, as required, his brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal. See 8 C.F.R. § 103.3(a)(2)(i) (providing that the appealing party must submit the complete appeal including any supporting brief and documents as indicated in the Form I-290B instructions). Further, the instructions for the Form I-290B in effect at the time the Petitioner filed his appeal clearly states in bold type that any appeal brief and/or evidence submitted after filing a Form I-290B "must be sent directly" to us.[1] The Petitioner's evidence on motion does not establish that he sent his brief and/or additional evidence to our office. Rather it evidences that a package was sent to an address in Tempe, Arizona.

The Petitioner also asserts on motion that he filed his brief timely, prior to the deadline. However, his appeal was summarily dismissed because he did not submit a brief to the AAO and otherwise failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal, not because his brief was untimely. 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 submitted to us, 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 FedEX package tracking information and contends that he submitted sufficient evidence to demonstrate we erred in summarily dismissing his appeal. However, as discussed above, the FedEX 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.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an

[1] The Form I-290B was updated in May 2024, however, it similarly states, "any brief or additional evidence submitted after [] fil[ing] Form I-290B must be sent directly to the AAO."

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.