U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30146284

Date: FEB. 13, 2024

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, as well as 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 qualified for classification as a member of the professions holding an advanced degree, but that he 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 a subsequent appeal because the Petitioner did not submit a timely brief or additional evidence specifying any erroneous conclusion of law or statement of fact in our summary dismissal. The matter is now before us on combined motions 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 the 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy the requirements and demonstrate eligibility for the requested benefit.

In our decision summarily dismissing the Petitioner's appeal, we noted that although 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. 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).

On motion, the Petitioner submits USCIS Form I-797, Notice of Action, Receipt Notice for USCIS Form I-290B, Notice of Appeal or Motion filed in connection with the Petitioner's appeal and United States Postal Service (USPS) *Click-n-Ship* label records indicating delivery of the Form I-290B and appeal brief. The Petitioner asserts that these new facts establish they timely submitted a brief or additional evidence in support of their appeal. However, the Petitioner incorrectly sent the brief in support of their appeal to the USCIS Phoenix Lockbox and not the Administrative Appeals Office as instructed in the Form I-290B instructions.

Relating to the location filing parties are required to submit any follow-on briefs, the instructions for the Form I-290B state:

> For appeals, you must file any brief and/or additional evidence within 30 calendar days of filing Form I-290B. **Any 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.
>
> For the AAO's mailing address, visit www.uscis.gov/aao. The submission must clearly identify the appeal it relates to.

(Emphasis in original). Additionally, the Petitioner filed the Form I-290B indicating they would submit their "brief and/or additional evidence *to the AAO* within the 30 calendar days of filing the appeal." (Emphasis added).

Since the brief was incorrectly filed, the AAO did not receive the supplemental brief until after having summarily dismissed the Petitioner's appeal on July 31, 2023. Because the Petitioner failed to 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. Furthermore, the Petitioner 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. In addition, the Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our appellate decision.

Even if the supplemental brief was properly filed, upon careful review of the brief, it generally reiterates the benefits of the Petitioner's profession, his qualifications, and the claimed economic impacts of his proposed business but does not provide any new evidence or arguments which overcome the Director's determination. In addition, the supplemental brief does not identify specifically any erroneous conclusion of law or statement of fact in the Director's decision. *See* 8 C.F.R. § 103.3(a)(1)(v). It does not specifically address the reasons the Director stated in the denial, nor does it identify any erroneous conclusion of law or statement of fact attributable to the Director.

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reopening or reconsideration of our decision. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.