U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36676357

Date: FEB. 13, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur, 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 Nebraska Service Center denied the petition, concluding the Petitioner had not established a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We summarily dismissed the appeal and a subsequently filed combined motion to reopen and to reconsider. The matter is now before us on a second combined motion 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). The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The Petitioner[1] timely filed an appeal in November 2023, which we summarily dismissed in May 2024 because the Petitioner had not specifically identified 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 indicated on his Form I-290B. In the prior combined motions, the Petitioner asserted that he timely submitted his appeal brief to U.S. Citizenship and Immigration Services (USCIS) and included a mailing label evidencing a package was delivered to an address in Tempe, Arizona in December 2023. However, we concluded that the

[1] While we reference the Petitioner, we note he is and has been represented by counsel for his appeal and subsequent combined motions.

evidence on motion demonstrated that the Petitioner did not submit his brief directly to the AAO as is required by the Form I-290B instructions and, as a result, the record contained no basis statement specifically identifying any legal or factual error in the Director's decision at the time of the appeal's adjudication in May 2024. We therefore dismissed the combined motions because the Petitioner had 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 the instant combined motions, the Petitioner asserts that the form instruction language directing him to file his appeal brief with the AAO, which we quoted in our prior decision, is current language and not representative of the instructions in existence of the time of his appeal filing. However, he filed his appeal on the form version dated December 2019. The associated form instructions contained the exact language quoted in our decision: any appeal brief and/or evidence submitted after filing a Form I-290B "must be sent directly to the AAO." See USCIS Form I-290B, Instructions for Notice of Appeal or Motion (rev. 12/02/19).

The Petitioner further asserts that the form instructions do not contain an address for the AAO. However, the form instructions provide that the AAO's mailing address can be found at www.uscis.gov/aao. Id. The Petitioner then argues that this web address provided in the form instructions for obtaining the AAO's address does not provide our address. The Petitioner submitted printouts of USCIS' webpages and Form I-290B instructions, revised May 2024. While we acknowledge that an individual has to select "Contacting the AAO" to obtain our address once arriving at www.uscis.gov/aao, the web address provided in the form instructions, we are unpersuaded that this step makes it "impossible to ascertain the correct address to submit supplemental briefs to the AAO" or that the filing instructions are "ambiguous" as the Petitioner goes on to claim.

The Petitioner then asserts that www.uscis.gov provides addresses for filing appeals by form type and that he sent his appeal filing to the address listed. However, the issue is not whether he filed his appeal at the correct location, but whether the Petitioner properly and timely submitted his appeal brief to the AAO, which the record does not demonstrate.

Every application form, benefit request, or other document must be submitted to USCIS and executed in accordance with the form instructions, which carry the weight of regulations. See 8 C.F.R. § 103.2(a)(1). Here, the Form I-290B instructions state that appeal briefs not submitted with the appeal are filed directly with the AAO. The form instructions also provide a web address for finding our mailing address, which is also publicly available information. The information submitted on motion does not establish that we erred in our prior decision by concluding the Petitioner did not submit a brief to the AAO in accordance with the form instructions.

Therefore, the Petitioner has not presented new facts that overcome the basis for our prior dismissal and has not met the requirements for reopening under 8 C.F.R. § 103.5(a)(2). The Petitioner also has not established that we erred as a matter of law or policy in our prior decision or that the dismissal was incorrect based on the evidence in the record of proceedings at the time. Accordingly, he has not satisfied the requirements for a motion to reconsider. See 8 C.F.R. § 103.5(a)(3).

Consequently, we have no basis for reopening or reconsideration of our decision, and the combined motions 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.