U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32760706

Date: JULY 29, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks second preference 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 did not establish that a waiver of the job offer requirement is in the national interest as set forth in the framework provided by *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We summarily dismissed a subsequent appeal because the Petitioner's general statement accompanying the appeal did not specifically identify any erroneous conclusions of law or statements of fact in the unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v). We also noted in the summary dismissal that the Petitioner's Form I-290B, Notice of Appeal or Motion, stated that the Petitioner would submit a brief and/or additional evidence in support of the appeal to our office within 30 calendar days of filing of the appeal but that no brief or evidence had been received. The matter is now before us on motion to reopen.

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 reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we review only the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). A motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused, in our discretion, if it is demonstrated that the delay was reasonable and was beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i). 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).

On motion, the Petitioner asserts that we did not receive the brief and additional evidence in support of the appeal because he mistakenly mailed it to an incorrect filing address. The Petitioner does not

assert that our summary dismissal was erroneous, but requests that we reopen the matter and accept the Petitioner's appeal brief and evidence at this time.

Although the Petitioner has stated new facts and submitted additional evidence regarding the incorrect filing address, and has now submitted the brief and evidence he intended to submit on appeal, these facts do not establish that we erred in dismissing the Petitioner's appeal. *See Matter of Coelho*, 20 I&N Dec. at 473 (requiring that new evidence have the potential to change the outcome). We therefore conclude that the Petitioner's motion to reopen does not state new facts, supported by documentary evidence, that establish proper cause to reopen the proceedings. *See* 8 C.F.R. § 103.5(a)(1)(i); (a)(2).

Moreover, 8 C.F.R. § 103.3(a)(2)(i) requires that a petitioner submit their appeal, including any supporting brief as indicated in the applicable form instructions, within 30 days after the service of the decision. The form instructions and the Form I-290B additionally provide that a petitioner may submit a brief within 30 calendar days after the filing of the appeal. Every form or benefit request must be submitted and executed in accordance with the form instructions, and the form's instructions are incorporated by reference into the regulations. 8 C.F.R. § 103.2(a)(1). A petitioner may have additional time to file a brief on appeal only if we receive a written request showing good cause for the additional time. 8 C.F.R. § 103.3(a)(2)(vi). Here, the Petitioner did not submit his brief in accordance with the regulations and the form instructions and did not request additional time to submit his appeal brief; indeed, in a statement submitted with the Petitioner's appeal he reiterated that he would file his brief within 30 calendar days. On motion, the Petitioner does not state new facts, supported by documentary evidence, that establish otherwise.

Additionally, even if we were to consider the substance of the brief and the additional evidence that the Petitioner intended to submit on appeal, the brief and evidence do not identify any specific erroneous conclusions of law or statements of fact in the unfavorable decision, as required of an appeal at 8 C.F.R. § 103.3(a)(1)(v). Instead, in the Petitioner's appellate brief he asserts that he received ineffective assistance from prior counsel and that new counsel believes that the Petitioner would be able to establish eligibility "if given the chance to re-file" the petition. The brief therefore requests another opportunity to provide more evidence in support of the Petitioner's request for a national interest waiver.

Although we understand that the Petitioner believes that he is eligible for a national interest waiver and wishes for an opportunity to provide more evidence, these statements do not establish proper cause to reopen the proceedings, or that our summary dismissal was in error. *See* 8 C.F.R. § 103.5(a)(1)(i); (a)(2).

Accordingly, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.