U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32844015

Date: JUL. 30, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a cybersecurity entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 Texas Service Center denied the Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the Petitioner did not establish that he was a member of the professions holding an advanced degree or their equivalent, or was an individual of exceptional ability. The Director further concluded that the Petitioner did not merit a national interest waiver. We summarily dismissed a subsequent appeal because it did not identify specifically any erroneous conclusion of law or statement of fact in the unfavorable decision.[1] 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). 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).

On motion, the Petitioner admits that his former counsel failed to submit a brief as she indicated she would in his appeal, but claims the error was beyond his control. He further claims that he is eligible for EB-2 immigrant classification and submits evidence to establish he is an individual of exceptional ability and that he merits a national interest waiver. Given that it was the actions of his prior counsel that resulted in a brief not being filed with his appeal through no fault of his own, and in light of the new evidence submitted on motion here in support of his eligibility for EB-2 immigrant classification, he requests that we reopen his appeal. As noted above, however, our review on motion is limited to

[1] We noted that the Petitioner stated that a brief and/or additional evidence would be submitted to the AAO within 30 calendar days of filing the appeal, but that he did not submit either.

reviewing our latest decision. Thus, the Petitioner must submit new facts and supporting evidence related to our decision to summarily dismiss his appeal. Here, the Petitioner asserts new facts in the form of an ineffective assistance of counsel claim. However, we note the record on motion does not include any supporting evidence reflecting that he has complied with the requirements for such a claim as described in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), including an affidavit detailing his agreement with prior counsel, evidence of notice to prior counsel of the ineffectiveness allegations, and the filing of a complaint with disciplinary authorities, to warrant reopening. Additionally, while the Petitioner submits new evidence relating to his overall eligibility for EB-2 immigrant classification and the underlying decision to deny his Form I-140, he does not state new facts that establish that he submitted a brief or statement on appeal that specifically identified an erroneous conclusion of law or statement of fact in the underlying decision being appealed. Because the facts and evidence submitted on motion do not address or otherwise overcome the basis for our decision to summarily dismiss the prior appeal, they do not meet the requirements of a motion to reopen. Accordingly, the motion to reopen will be dismissed.

ORDER: The motion to reopen is dismissed.