U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30644056

Date: MAY 6, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner is an entrepreneurial business management consultant who seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and an individual of exceptional ability, as well as a national interest waiver (NIW) 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record established that the Petitioner qualified for the underlying visa classification, but he did not merit a discretionary waiver of the job offer requirement in the national interest. The Director dismissed two subsequent motions. Within the second motion dated September 11, 2023, the Director concluded that the Petitioner did not offer new facts to support the motion to reopen, nor did he provide adequate reasons for the motion to reconsider. The Petitioner has filed an appeal on the second motion dismissal.

The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

Relating to the most recent decision the Director issued, a motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). As we note above, the Director decided that the Petitioner's second motion filing failed on both accounts.

As an initial matter, we note that an appellant's brief is initially limited to the basis of the most recent underlying adverse decision. General support that an appeal must first overcome the most recent decision lies within the regulation at 8 C.F.R. § 103.3(a)(1)–(4) where it repeatedly discusses the underlying or latest decision, it limits the time one has to file an appeal after the most recent decision, and it references the responsibility of the official who made the last decision to state the appellate jurisdiction. This demonstrates that any appeal must first address and overcome the Director's most

recent adverse decision before the filing party's arguments may move on to any issue that previously arose in the proceeding relating to their petition. Thus, we consider whether the Director properly dismissed the Applicant's motion to reopen and reconsider.

The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within the most recent decision. *See* 8 C.F.R. § 103.3(a)(1)(v). If the filing party fails to specifically identify such an error within the latest adverse decision, the affected party has not identified the basis for the appeal.

Here, the Director's primary basis for dismissing the motions was the Petitioner's failure to offer new facts for a motion to reopen or allegations of error that were supported by proper legal authority for a motion to reconsider. While the Director discussed some NIW eligibility factors, those were not the primary basis for the adverse decision; the primary basis was that the Petitioner did not offer anything new that would warrant approving one of the motions. Therefore, the Petitioner's basis for the appeal would be directly contesting the Director's September 11, 2023 determination that the second motion lacked new facts or adequate reasons for the motions.

The summary dismissal of an appeal is appropriate when the filing party asserts the underlying trier of fact came to the wrong conclusion or expresses general disagreement with the lower decision and "fails to specify the reasons for the appeal." *Matter of Valencia*, 19 I&N Dec. 354, 355–56 (BIA 1986); *Matter of Davis*, 20 I&N Dec. 536, 537–38 (BIA 1992); *Matter of Keyte*, 20 I&N Dec. 158, 159 (BIA 1990); *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988); *Matter of Lodge*, 19 I&N Dec. 500, 501 (BIA 1987); *Matter of Holguin*, 13 I&N Dec. 423, 425 (BIA 1969).

The Petitioner does not assert that he provided new facts for the motion to reopen, nor does he claim that he offered a sufficient basis for the motion to reconsider. Instead, he provides much of the same arguments regarding the merits of his NIW eligibility that he offered throughout these proceedings before the Director, and that is an inadequate basis for this appeal. *Cf. Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

The regulation at 8 C.F.R. § 103.3(a)(1)(v) allows us to promptly deal with appeals where the filing party "fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal," which is the present situation. As the Petitioner has not challenged the Director's analysis regarding his motions, we must summarily dismiss the appeal. Even if we were not dismissing this appeal as noted above, we would adopt and affirm the Director's decision because we agree that the Petitioner has not demonstrated he warrants an approval of this NIW petition.

We further note the Petitioner filed a new NIW petition after this petition was denied. As the claims and evidence in the subsequent NIW petition appear markedly similar to the materials in this case, and because we agree with the Director that this record does not demonstrate eligibility for an NIW, it is unclear whether the subsequent filing actually warranted an approval or whether the Director would be justified initiating revocation-on-notice proceedings.

ORDER: The appeal is summarily dismissed under 8 C.F.R. § 103.3(a)(1)(v).