U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34712814

Date: OCT. 28, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur in the mental health industry, 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 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 although the Petitioner qualified as an advanced degree professional, she did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] We summarily dismissed the Petitioner's appeal. 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). *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). 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). Our review on motion is limited to reviewing our latest decision, the May 2024 motion dismissal. 8 C.F.R. § 103.5(a)(l)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The Director denied the petition on November 3, 2023. The Petitioner filed an appeal on December 6, 2023, checking the box on Form I-290B, Notice of Appeal or Motion, stating, "My brief and/or additional evidence will be submitted to the AAO within 30 calendar days of filing the appeal."

[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

We summarily dismissed the appeal on May 3, 2024, stating, "To date we have not received your brief or additional evidence."

On motion, the Petitioner asserts her brief was submitted within 30 calendar days of filing the appeal and submits a delivery notification from the shipping company establishing that she mailed the brief to the USCIS Phoenix Lockbox in Tempe, Arizona and that the date of receipt of the brief was January 5, 2024.

The instructions for the Form I-290B state:

> **Appeal:** Provide a statement that specifically identifies an erroneous conclusion of law or fact in the decision being appealed. **You must provide this information with the Form 1-290B, even if you intend to file a brief later.**

(Emphasis in original.) The Petitioner did not include such a statement with her Form I-290B. In addition, both the Form I-290B and its instructions inform appellants who elect to submit a supplemental brief within 30 days of filing an appeal to mail the brief or additional evidence *directly to the AAO.* Every form, benefit request, or other document must be executed in accordance with the instructions on the form, which are incorporated into the regulation requiring its submission. 8 C.F.R. § 103.2(a)(1). Further discussion of the filing requirements for these documents is found at 8 C.F.R. § 103.2(b)(1), which provides that "[e]ach benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions." *See also Ramirez-Coria v. Holder*, 761 F.3d 1158, 1162 (10th Cir. 2014) (concluding that the failure to follow immigration form instructions can result in the dismissal of an application or petition); *Mejia-Velasquez v. Garland*, 26 F.4th 193, 201–05 (4th Cir. 2022); *Sunday v. Att'y Gen. United States of Am.*, 832 F.3d 211, 213 (3d Cir. 2016). In this instance, the Petitioner mailed her brief to the USCIS Phoenix Lockbox, not directly to the AAO as instructed, which delayed its incorporation into the record.

The record before us at the time we summarily dismissed the Petitioner's appeal in May 2024 did not contain a brief or other basis statement specifically identifying an erroneous conclusion of law or statement of fact in the decision being appealed. 8 C.F.R. § 103.3(a)(1)(v). Therefore, the Petitioner has not established that our summary dismissal of the appeal was based on an incorrect application of law or policy warranting reconsideration of our decision; or that a new fact, supported by evidence, shows proper cause to reopen our appeal decision. As such, we affirm our previous determination.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.