U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35186051

Date: DEC. 12, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 Form I-140, Immigrant Petition for Alien Workers (national interest waiver), 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. The matter is now before us as combined motions 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). 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).

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

The Petitioner timely filed an appeal in April 2024, which we summarily dismissed in June 2024 because the Petitioner did not identify specifically any legal or factual error in the Director's decision

on her Form I-290B, Notice of Appeal or Motion, and did not submit her appeal brief and/or additional evidence to us within 30 days of filing the appeal as she indicated on her Form I-290B.

On motion, the Petitioner asserts that we erred in summarily dismissing her appeal because she submitted a brief, which was delivered in April 2024. She submits a copy of the appeal brief and a receipt indicating a delivery was made on April 29, 2024 to Tempe, Arizona. However, the Petitioner indicated on the Form I-290B submitted on appeal that she would submit, as required, her brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal. See 8 C.F.R. § 103.3(a)(2)(i) (providing that the appealing party must submit the complete appeal including any supporting brief and documents as indicated in the Form I-290B instructions). Further, the instructions for the Form I-290B in effect at the time the Petitioner filed her appeal clearly state that any appeal brief and/or evidence submitted after filing a Form I-290B "must be sent directly" to us.[1] The Petitioner's evidence on motion does not establish that she sent her brief and/or additional evidence to our office. Rather it evidences that a package was sent to an address in Tempe, Arizona.

The Petitioner also asserts on motion that she filed her brief timely because the last day of the filing period fell on a weekend, and according to USCIS policy we will extend the filing date to the next business day that is not a Saturday, Sunday, or federal holiday. However, her appeal was summarily dismissed because she did not submit a brief to the AAO and otherwise failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal, not because her brief was untimely. As of the date of the summary dismissal, our office had not received the Petitioner's appeal brief and the evidence submitted does not demonstrate that it was delivered to our office within 30 days of filing the appeal.

Therefore, the Petitioner has not presented new facts that overcome the basis for the summary 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 summary dismissal was incorrect based on the evidence in the record of proceedings at the time. Accordingly, she 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.

[1] The Form I-290B was updated in May 2024, however, it similarly states, "any brief or additional evidence submitted after [] fil[ing] Form I-290B must be sent directly to the AAO."