U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29527055

Date: JAN. 11, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur and an automobile repair worker, seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 qualify for the EB-2 classification as an individual of exceptional ability and did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

We summarily dismissed the subsequent appeal as the Petitioner did not identify any specific legal or factual error in the Director's decision on his Form I-290B, Notice of Appeal or Motion, and did not submit his brief and/or additional evidence to us within 30 days of filing the appeal as he indicated on his Form I-290B. 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 motion.

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.

On motion to reopen, the Petitioner claims that he timely filed his appeal brief on March 6, 2023, and submits a copy of the United States Postal Service (USPS) mailing label along with the appeal brief that he previously intended to submit to us. However, the mailing label shows that the Petitioner incorrectly mailed his appeal brief to the filing location of Form I-290B instead of sending it directly to our office, contrary to the instructions of the Form I-290B. The Form I-290B instructions specifically require that any appeal brief and/or evidence submitted after filing a Form I-290B "must

be sent directly to the AAO." *See* USCIS Form I-290B, Instructions for Notice of Appeal or Motion, at 6 (rev. 12/02/19).

As the Petitioner's evidence and explanations on motion to reopen do not show that he properly filed his appeal brief with us prior to our adjudication of his appeal, we conclude that our summary dismissal of the appeal according to 8 C.F.R. § 103.3(a)(1)(v) was proper, and the Petitioner has not demonstrated that reopening is warranted.

Furthermore, while the Petitioner indicated on his Form I-290B that he was filing both a motion to reopen and a motion to reconsider, his brief indicates only that he is filing a motion to reopen. As his brief does not state any reason for reconsideration, the motion to reconsider will be dismissed because it does not meet the requirements of 8 C.F.R. § 103.5(a)(3).

Although the Petitioner has submitted additional evidence in support of the motion to reopen, he did not demonstrate on motion that he followed form instructions and mailed his brief and additional evidence to the correct mailing address. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion 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.