U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29750828

Date: JAN. 25, 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, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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). 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy the aforementioned requirements and demonstrate eligibility for the requested benefit.

In our decision summarily dismissing the Petitioner's appeal, we stated that his submission did not identify specifically any erroneous conclusion of law or statement of fact in the Director's decision. Further, while the Petitioner indicated that a brief and/or additional evidence would be submitted to the AAO within 30 calendar days of filing the appeal, the record did not show that the AAO received those materials within that period.[1] An officer to whom an appeal is taken shall summarily dismiss

[1] Previous counsel incorrectly sent the Petitioner's supplemental brief to the Vermont Service Center instead of the AAO. Any brief and/or evidence submitted after filing the Form I-290B, Notice of Appeal or Motion, must be sent directly to the

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).

On motion, the Petitioner states that previous counsel was "required to submit the supplemental brief within 30 days of the date of filing the I-290B appeal to the AAO. However, this brief did not reach the AAO within the stipulated time." He further indicates that he and his "family have landed in this distressed situation not because of any mistake of our own but of my attorney." To the extent the Petitioner makes an ineffective assistance of counsel claim, we note that he has not complied with the requirements described in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). *See Matter of Melgar*, 28 I&N Dec. 169, 171 (BIA 2020).

Furthermore, the Petitioner has not demonstrated that our summary dismissal decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. In addition, the Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our appellate decision.

While the motion includes a copy of the supplemental brief and a December 2022 letter from [redacted] offering the Petitioner a position as a Financial Reporting Analyst, even if we were to consider this documentation, it does not show that our summary dismissal was in error or establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. For example, the supplemental documentation does not overcome the Director's determination that the Petitioner had not demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework. *See Matter of Dhanasar*, 26 I&N Dec. 884, 889-90 (AAO 2016). As it relates to the national importance of the Petitioner's proposed endeavor, the supplemental brief states:

> On December 19, 2022, [the Petitioner] was offered full-time employment at [redacted] This role requires his qualifications and experience to maintain receivable accounts with a special emphasis on the analysis of booking and collections. [The Petitioner's] employment at [redacted] as a financial reporting analyst has national importance because his work as a Financial Reporting Analyst is in the national interest.

The Petitioner received the aforementioned job offer after the Form I-140 petition's filing date.[2] Eligibility must be demonstrated at the time of filing the benefit request. *See* 8 C.F.R. § 103.2(b)(1), (12). Furthermore, the supplemental brief does not identify specifically any erroneous conclusion of law or statement of fact in the Director's decision. *See* 8 C.F.R. § 103.3(a)(1)(v). It does not specifically address the reasons the Director stated in the denial, nor does it identify any erroneous conclusion of law or statement of fact attributable to the Director.

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or USCIS policy.

AAO as required by the regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the filing instructions for the Form I-290B. The AAO did not receive the supplemental brief from the Vermont Service Center until July 26, 2023, after having summarily dismissed the Petitioner's appeal on July 7, 2023.

[2] The Petitioner's Form I-140 was filed on March 22, 2021.

Consequently, we have no basis for reopening or reconsideration of our decision. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.