U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30588189

Date: MAR. 26, 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 Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We 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.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the petitioner must file the motion within 30 days of the decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of submission, but the date of actual receipt with a valid signature and the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i), (ii). Further, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In addition, 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.

We dismissed the Petitioner's appeal on August 24, 2023. The record indicates that the Petitioner attempted to file the combined motions on September 15, 2023, however, the Form I-290B, Notice of Appeal or Motion, was not accepted because it did not have a valid signature. Motions submitted without a valid signature do not retain a filing date. 8 C.F.R. § 103.2(a)(7)(ii); *see also* 8 C.F.R. § 103.5(a)(1)(iii)(A). The Petitioner resubmitted the properly signed Form I-290B on October 6, 2023,

or 44 days after our decision was issued.[1] Accordingly, the combined motions are untimely filed and therefore must be dismissed. Even if we were to consider the merits of the motions, they do not meet the applicable requirements.

On motion, the Petitioner contends that we did not consider all the evidence that she had submitted with the petition and, later, in response to a request for evidence. Our appellate decision, however, provided a thorough analysis of the evidence and arguments she presented. The Petitioner asserts that her "documents were not properly analyzed by the Service, violating the Fifth Amendment of the Constitution of the United States of America." The Fifth Amendment in part states that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const. amend. V. The Petitioner's motion, however, does not specifically identify the documents that "were not properly analyzed" and explain how they render her eligible for a national interest waiver.

The Petitioner asks that we "reconsider the adverse decision and reopen [the petition] and give full consideration [to] all the submitted documents." In our decision dismissing the appeal, we agreed with the Director that the Petitioner did not meet the first prong of the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). We explained that the Petitioner had not shown that her proposed endeavor would extend beyond her company and its "clientele to impact either the physical therapy or home healthcare industry more broadly at a level commensurate with national importance." In addition, we stated that the Petitioner had not demonstrated that her undertaking "has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation."

The Petitioner's motion does not address these determinations or establish that they were in error. Instead, the Petitioner makes vague and general assertions that USCIS disregarded unspecified evidence. Such assertions do not establish that our appellate decision was incorrect, and do not oblige us to re-adjudicate the appeal de novo. The Petitioner does not identify any specific documents or other pieces of evidence that we overlooked in our appellate review of the record, and she does not explain how discussion or consideration of those materials would have changed the outcome of our August 2023 decision. She therefore has not demonstrated that our appellate 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.

The Petitioner's combined motions are untimely filed. In addition, the Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has she shown that we erred as a matter of law or USCIS policy. 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 her underlying petition remains denied.

[1] With respect to an untimely motion to reopen, failure to file during the required period "may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." *See* 8 C.F.R. § 103.5(a)(1)(i). Here, the Petitioner has not demonstrated that the delay in filing was reasonable and beyond her control.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.