U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35170512

Date: JAN. 29, 2025

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 through a national interest waiver (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner qualified for a discretionary waiver of the job offer requirement in the national interest. We summarily dismissed the Petitioner's appeal. The matter is now before us on a combined motion to reopen and reconsider under 8 C.F.R. § 103.5. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the appeal.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

A motion to reconsider must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy, and (3) establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

After the Director denied the petition, the Petitioner filed an appeal reflecting they would submit a brief within 30 days (follow-on brief) and included a table of contents listing the Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative; the Form I-290B, Notice of Appeal or Motion; and a copy of the Director's denial decision. We summarily dismissed that appeal because the Petitioner's Form I-290B did not include any statement alleging error on the Director's part, nor did the record contain his follow-on brief. Now, the Petitioner files a motion to reopen and reconsider of that summary dismissal.

As our decision on the appeal contained two adverse determinations, we will evaluate the motions in that context.

First, the Petitioner's motions do not dispute our determination that their statements accompanying the appellate filing did not specifically identify any erroneous conclusion of law or statement of fact for the appeal. The regulation at 8 C.F.R. § 103.3(a)(1)(v) requires the filing party to make such an allegation, and the failure to do so mandates the summary dismissal of any appeal. Further, this is a requirement detailed in the Instructions for Notice of Appeal or Motion. Each form's instructions regulate the designated location for filing the form and any attendant materials. Adherence to a form's instructions is mandated within the regulation. *See* 8 C.F.R. § 103.2(a)(1). This regulation specifically states:

> Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.

The regulation at 8 C.F.R. § 103.3(a)(2) provides in pertinent part: "The affected party must submit the complete appeal . . . as indicated in the applicable form instructions . . . ." The instructions for the Form I-290B, Notice of Appeal or Motion 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 I-290B, even if you intend to file a brief later.**

(Emphasis in original). The lack of a statement adequately detailing such an error is one illustration of the Petitioner's failure to adhere to the regulatory requirements for filing an appeal. This shortcoming prevents the Petitioner from demonstrating that our prior decision was based on an incorrect application of law or policy, and that decision was incorrect based on the evidence in the record of proceedings at the time of the decision. As a result, the Petitioner has not satisfied the requirements of a motion to reconsider relating to this adverse element of our appellate decision.

Second, although the Petitioner addresses the second adverse determination in our appellate dismissal relating to their submission of a follow-on brief within 30 days, we conclude they again did not adhere to the Form I-290B instructions on this issue. Relating to the location filing parties are required to submit any follow-on briefs, the instructions for the Form I-290B state:

> For appeals, you must file any brief and/or additional evidence within 30 calendar days of filing Form I-290B. **Any brief and/or evidence submitted after you file Form I-290B must be sent directly to the AAO**, even if the appeal has not yet been transferred to the AAO.
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> For the AAO's mailing address, visit www.uscis.gov/aao. The submission must clearly identify the appeal it relates to.[1]

[1] AAO is the initialism for this office, the Administrative Appeals Office.

(Emphasis in original). Additionally, the Petitioner filed the Form I-290B indicating they would submit their "brief and/or additional evidence *to the AAO* within the 30 calendar days of filing the appeal." (Emphasis added).

The motion reflects that the Petitioner mailed the follow-on brief to the address listed on this agency's website for the USCIS Phoenix Lockbox associated with FedEx, UPS, and DHL deliveries. Notably, the Petitioner mailed the follow-on brief to the address associated with the lockbox instead of "directly to the AAO" as required by the Form I-290B instructions listed above. This is a second instance in which the Petitioner did not follow the Form I-290B instructions and that shortcoming resulted in a dismissal of their appeal. The Petitioner's submission here does not demonstrate eligibility for the requested benefit, nor does it have the potential to change the outcome of our most recent decision. *See Coelho*, 20 I&N Dec. at 473.

As we noted in our decision on the appeal, 8 C.F.R. § 103.3(a)(1)(v) provides that an appeal must be summarily dismissed if the filing party has not identified a basis for the appeal because they did not specifically identify any erroneous conclusion of law or statement of fact. Because the Petitioner did not adhere to the form's instructions by including such a statement attributing error to the Director's decision on the date they filed the appeal, and because they failed to follow the form's instructions regarding where to submit the follow-on brief, we conclude that our decision to summarily dismiss the appeal was a correct one.

Here, the Petitioner has not established eligibility as of the filing date. He also has not demonstrated that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the 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.