U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28838664

Date: NOV. 08, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks second preference 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 the Petitioner did not establish that a waiver of the required job offer and thus of the labor certification would be in the national interest upon application of the analytical framework we first explicated in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We summarily dismissed a subsequent appeal because the Petitioner did not submit a brief or additional evidence specifying any erroneous conclusion of law or statement of fact in our summary dismissal. 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). 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).

On motion, the Petitioner submits USCIS Form I-797, Notice of Action, Receipt Notice for USCIS Form I-290B, Notice of Appeal or Motion filed in connection with the Petitioner's appeal and United States Postal Service (USPS) *Click-n-Ship* label records indicating delivery of the Form I-290B and appeal brief. The Petitioner asserts that these new facts establish they timely submitted a brief or additional evidence in support of their appeal. The Petitioner's assertions are not well taken. At the outset, we note that the Petitioner sent the brief or additional evidence in support of their appeal to the USCIS Texas Service Center and not the Administrative Appeals Office as instructed in the Form I-290B instructions. But even if the Petitioner had sent the brief or additional evidence directly to our

office in accordance with the Form I-290B instructions, it would still not have been timely. The Petitioner mistakenly asserts that USCIS' COVID-19 related flexibilities in effect at that time permitted filing of the brief or additional evidence within 60 days of filing their appeal. USCIS' COVID-19 related flexibilities did not apply to the 30-day time period within which a Petitioner must submit a brief or additional evidence to the AAO if they do not file it with their appeal. The form instructions require submission of a brief or additional evidence within 30 days of filing an appeal on Form I-290B. The Petitioner filed Form I-290B to appeal the Director's decision on December 13, 2022, and was required to submit their brief within 30 days, or before January 12, 2023. The Petitioner's brief was delivered over 30 days later on February 15, 2023. So the Petition has not shown proper cause to reopen and has not overcome the grounds for summary dismissal of their appeal.

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. But the Petitioner did not state any reasons for the reconsideration of our most recent prior decision to deny their motion to reopen accompanied by any pertinent precedent decision establishing that our decision was incorrect based on an erroneous application of law of USCIS policy to the existing evidence of record. So, for that reason, the Petitioner has not shown proper cause for reconsideration and has not overcome the grounds for summary dismissal of their appeal.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. 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 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.