U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28102499

Date: OCT. 06, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile)

The Petitioner seeks classification as a special immigrant juvenile (SIJ) under sections 101(a)(27)(J) and 204(a)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law. The Director of the National Benefits Center denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), in part because the Petitioner did not establish that his request for SIJ classification warranted the U.S. Citizenship and Immigration Services' (USCIS') consent. We summarily dismissed the appeal because he 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 the required appeal brief and/or additional evidence to us within 30 days of filing the appeal as he indicated on his Form I-290B. We also dismissed a subsequent combined motion to reopen and reconsider because he did not meet the requirements of a motion. The matter is now before us on a second combined motion to reopen and reconsider. Upon review, we will dismiss the combined motion.

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must show 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 proceeding 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 a motion that meets these requirements and establishes eligibility for the benefit sought.

The Petitioner has not demonstrated that reconsideration is warranted. On motion to reconsider, he submits a brief along with the additional documents he previously intended to submit on appeal but did not, including his original appeal brief. However, he does not dispute or assert any error in our prior determination on appeal that he did not submit to us the required brief and/or additional evidence within 30 days as he indicated he would on the Form I-290B and that we did not have his promised brief and documents when we adjudicated the appeal, or that we erred in our subsequent dismissal of his previous motions. Consequently, the Petitioner has not demonstrated that our last decision was based on an incorrect application of law or policy and that our decision was incorrect based on the evidence then before us at the time. The Petitioner therefore has not met the requirements of a motion to reconsider, and we will dismiss this motion. 8 C.F.R. § 103.5(a)(3).

The Petitioner also has not demonstrated that reopening is warranted. He reasserts on motion to reopen that his former attorney timely sent the appeal brief and documents to us in May 2022. He explains that the appeal brief was mistakenly sent to an incorrect USCIS location using regular mail without a tracking number. He also states that his former attorney even inquired about the appeal in June and July 2022, prior to our summary dismissal; and he now submits a copy of the related email correspondence with USCIS as new evidence that he attempted to timely mail his appeal brief.

We acknowledge the Petitioner's explanations that his former attorney may have attempted to timely mail his appeal brief and supporting evidence, and subsequently inquired about appeal updates. However, even if the Petitioner did mail the appeal brief and evidence, he undisputedly did so to the wrong USCIS address rather than directly to us, as required. The relevant regulations clearly state that an appeal must be properly filed pursuant to 8 C.F.R. § 103.3(a)(2)(i) (stating that the appealing party must submit an appeal on Form I-290B and must submit the complete appeal including any supporting brief and evidence as indicated in the Form I-290B instructions within 30 days of filing the appeal). As we stated in our last dismissal of the prior motion, 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 us. Further, form instructions also carry the weight of binding regulations. 8 C.F.R. § 103.2(a)(1). The Petitioner mailed the appeal brief and evidence to the wrong address, and they were not part of the record before us at the time of our appeal adjudication. The subsequent motion did not overcome our summary dismissal or otherwise show that reopening was warranted. The new documents and explanations on instant motion similarly do not demonstrate that he properly filed his appeal brief and evidence with us before our appeal adjudication, such that reopening would now be warranted.

Contrary to the Petitioner's assertion in these motion proceedings, we did not concede in our last decision that he was otherwise eligible for SIJ classification. Rather, we merely acknowledged his prior motion arguments and specifically declined his request to reopen the matter sua sponte and to consider the merits of his case, as he did not satisfy the motion requirements at 8 C.F.R. § 103.5(a). He nonetheless avers that, in the interests of justice and humanitarian considerations, his late appeal brief should be deemed as properly filed as of the date it was allegedly mailed to the incorrect location in May 2022, two days before the 30-day briefing deadline, and further, that failure to reach the merits of his appeal would result in irreparable damage. But he does not argue that our summary dismissal of his incomplete appeal, pursuant to 8 C.F.R. § 103.3(a)(1)(v), was improper. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound by governing statutes and regulations in force); *see also United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry the force and effect of law). Further, the record still does not reflect that the Petitioner in fact ever submitted his appeal brief to us before he refiled a copy of it on his subsequent motion. Although the regulations, for good cause shown, permit us to grant more time to submit an appeal brief upon a written request for additional briefing time, the record does not indicate that he had ever sought such request with us, that we granted it, and that he then submitted his appeal brief directly to us, as required. 8 C.F.R. § 103.3(a)(2)(vii), (viii).

Accordingly, the Petitioner has not established that reopening or reconsideration of our prior decision is warranted. He also has not shown circumstances sufficient for us to reopen the matter on a service motion and reach the merits of his case. 8 C.F.R. § 103.5(a)(5)(i); *Matter of G-D-*, 22 I&N Dec. 1132, 1135 (BIA 1999) (explaining that sua sponte authority is reserved for extraordinary circumstances);

see also Matter of J-J-, 21 I&N Dec. 976, 984 (BIA 1997) (observing that sua sponte reopening is not intended to be used to "circumvent the regulations, where enforcing them might result in hardship"). Therefore, the following orders will be entered.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.