U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33855414

Date: SEP. 05, 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 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 did not establish eligibility for a waiver of the job offer requirement in the national interest. We summarily dismissed the subsequent appeal as the Petitioner did not identify any specific legal or factual error in the Director's decision on his Form I-290B, Notice of Appeal or Motion (Form I-290B), and did not submit his brief and/or additional evidence to us within 30 days of filing the Form I-290B as he indicated he would on his Form I-290B. The matter is now before us on a combined motion 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 motion.

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). 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.

The record reflects that the Petitioner filed his Form I-290B on November 6, 2023, indicating he would submit his brief and/or additional evidence to us within 30 days. On motion, the Petitioner claims that he timely filed his appeal brief on December 6, 2023, and that we erred in dismissing his appeal based on non-receipt of his brief. The Petitioner submits documentation from FedEx Express showing a receipt date of December 6, 2023, along with the appeal brief that he previously intended to submit to us. However, the FedEx Express documents show that the Petitioner incorrectly mailed his appeal brief to a U.S. Citizenship and Immigration Services Phoenix Lockbox in Tempe, Arizona instead of

sending it directly to our office, contrary to the Form I-290B instructions. 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 the AAO." See USCIS Form I-290B, Instructions for Notice of Appeal or Motion, at 6 (rev. 05/31/24). As the Petitioner's evidence does not show that he properly filed his appeal brief with us prior to our adjudication of his Form I-290B on April 24, 2024, we conclude that our summary dismissal of the appeal according to 8 C.F.R. § 103.3(a)(1)(v) was proper.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, he did not demonstrate on motion that he followed form instructions and mailed his brief to the correct mailing address.

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 motion 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.