U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30251557

Date: MAR. 8, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a construction and building inspector, seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for the EB-2 classification as an individual of exceptional ability nor as an individual holding an advanced degree, and did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

The Petitioner appealed the Director's decision, and we summarily dismissed the 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, and did not submit his brief and/or additional evidence to us within 30 days of filing the appeal as he indicated on his Form I-290B. 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 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.

On motion, the Petitioner claims that he timely filed his appeal brief on April 12, 2023, and submits a copy of the United States Postal Service (USPS) mailing label. However, the mailing label shows that the Petitioner incorrectly mailed his appeal brief to the filing location of Form I-290B instead of sending it directly to our office, contrary to the instructions of the Form I-290B. 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. 12/02/19).

Since the brief was incorrectly filed, we did not receive it before we summarily dismissed the Petitioner's appeal on August 22, 2023. Because the Petitioner failed to follow the form's instructions regarding where to submit the appeal brief, we conclude that our decision to summarily dismiss the appeal was a correct one. In other words, our determination that the record lacked a brief was correct. The Petitioner therefore has not demonstrated that our summary dismissal 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.

Even if the supplemental brief had been properly filed, a careful review of the brief reveals that it generally reiterates the benefits of the Petitioner's profession, his qualifications, and the claimed economic impacts of his proposed business but does not provide any new evidence or arguments which overcome the Director's determination. In addition, the supplemental brief does not identify specifically any erroneous conclusion of law or statement of fact in the Director's decision. *See* 8 C.F.R. § 103.3(a)(1)(v). It does not specifically address the reasons the Director stated in the denial, nor does it identify any erroneous conclusion of law or statement of fact attributable to the Director. Thus, even if we were to consider the brief it would afford the Petitioner no relief.

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has he 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 his underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.