



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 29259228

Date: DEC. 14, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an accountant, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and an individual of exceptional ability in the sciences, arts or business, 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 Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest.

The Acting Director denied the petition on January 20, 2023. The Petitioner filed her appeal on February 22, 2023. The appeal did not include an explanation for the basis for the appeal, but the Petitioner checked a box on Form I-290B, Notice of Appeal or Motion, stating, "My brief and/or additional evidence will be submitted to the AAO within 30 calendar days of filing the appeal."

We summarily dismissed the appeal on June 20, 2023, stating, "To date we have not received your brief and or additional evidence." The matter is now before us on a motion to reopen. On motion, the Petitioner disputes this finding and submits a supplementary statement, along with evidence that she mailed the brief on March 13, 2023, and that the brief was received on March 17, 2023.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen to instances where the filing party has shown "proper cause" for that action. Thus, to merit reopening, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The Petitioner maintains that she timely submitted a brief in support of her appeal on March 17, 2023. She provides a copy of her brief dated January 27, 2023, and a U.S. Postal Service (USPS) mailing

receipt and tracking information showing delivery of a package to the U.S. Citizenship and Immigration Services (USCIS) Texas Service Center on March 17, 2023.

The regulations require an affected party to submit the complete appeal including any supporting brief as indicated in the applicable form instructions within 30 days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). The record reflects that the Petitioner properly filed her Form I-290B and filing fee at the location designated by the form instructions and indicated it would file a brief and/or evidence with the AAO within 30 days.

The form instructions to the Form I-290B instruct appellants who elect to submit a supplemental brief within 30 days of filing an appeal to mail the brief or additional evidence directly to the AAO. In this instance, the Petitioner mailed her brief to the Texas Service Center. The Petitioner sent her appeal statement to the wrong address which delayed its incorporation into the record.

The record before us at the time we summarily dismissed the Petitioner's initial appeal in June 2023 did not contain a brief or other statement specifically identifying an erroneous conclusion of law or statement of fact in the decision being appealed. Therefore, there was no error in summarily dismissing the appeal. While the new evidence submitted in support of this motion includes a copy of an appellate brief, the Petitioner has neither claimed nor presented evidence that the brief was properly submitted in accordance with the form instructions as required by 8 C.F.R. § 103.3(a)(2)(i).

For the reasons discussed above, the Petitioner has not established proper grounds for reopening. As the Petitioner has not shown proper cause for reopening the appeal, we will not address her claims that the Acting Director denied the underlying petition in error.

ORDER: The motion to reopen is dismissed.