U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29222014

Date: DEC. 27, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an information technology (IT) entrepreneur, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish: (1) the national importance of his proposed endeavor, and (2) that, on balance, the United States would benefit from waiving the job offer requirement. We dismissed a subsequent appeal. The matter is now before us on a motion to 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 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.

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. 8 C.F.R. § 103.5(a)(1)(i). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The regulations make no provision for accepting an untimely filed motion to reconsider.

We dismissed the Petitioner's appeal on May 2, 2023. The Petitioner filed the present motion more than two months later, on July 5, 2023. On motion, the Petitioner shows that he did not receive our dismissal notice at his overseas address until June 8, 2023, by which time the deadline for filing a motion had passed. The Petitioner asks that we therefore excuse the untimely filing of the motion,

although he cites no authority that would allow us to do so. The regulation at 8 C.F.R. § 103.5(a)(1)(i) gives us discretion to accept an untimely motion to *reopen* if the delay was reasonable and was beyond the petitioner's control, but there is no comparable provision for motions to *reconsider*.

The Petitioner has not established that we did not properly issue the appellate decision. Routine service consists of mailing the notice by ordinary mail addressed to the affected party and his or her attorney or representative of record at his or her last known address. 8 C.F.R. § 103.8(a)(1)(i). When we dismissed the Petitioner's appeal, we sent copies of the dismissal decision by regular mail to the Petitioner and to the Petitioner's then-attorney of record, at the addresses provided for both. There is no evidence, and the Petitioner does not claim, that the attorney's copy was delayed or returned as undeliverable. Therefore, the record before us indicates that we properly issued the dismissal notice to the Petitioner's then-attorney of record as well as the Petitioner.

Our appellate decision was properly mailed to the Petitioner's then-attorney of record as well as the Petitioner, and as noted above the regulation at 8 C.F.R. § 103.5(a)(1)(i) does not allow us discretion to accept the untimely filing. Furthermore, 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).[1]

ORDER: The motion to reconsider is dismissed.

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[1] Furthermore, the Petitioner has not established that he would have prevailed on the merits. The Petitioner states that the Director's request for evidence, the Director's denial decision, and our appellate decision all disregarded the Petitioner's emphasis on business intelligence. The scope of the motion is limited to the appellate decision, which is "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii).

The purpose of an appeal is to identify specific errors of fact or law in the denial notice. *See* 8 C.F.R. § 103.3(a)(1)(v). The Petitioner's brief on appeal mentions the phrase "business intelligence" in the context of capsule descriptions of the Petitioner's business activities, but does not emphasize his work in business intelligence as a basis for the national interest waiver. Instead, that brief indicated that the national importance of the proposed endeavor lay in the potential employment of U.S. workers and "the ripple effects of his professional activities." The Petitioner states, on motion, that the term "Information Technology" involves much more than "simply a technician installing computers," but our appellate decision did not characterize information technology in that way. The Petitioner has not shown an incorrect application of law or policy and that we would have sustained the appeal if we had discussed the proposed endeavor in greater detail.

The Petitioner also contends that we did not give sufficient weight to policy guidance concerning the importance of fields in the sciences, technology, engineering, and mathematics (STEM). The Petitioner cites 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual, which lays out "specific evidentiary considerations relating to STEM degrees and fields." In our appellate decision, we stated: "We acknowledge the importance of IT and STEM fields, and also of addressing the nation's shortage of IT professionals; however, the Petitioner has not sufficiently explained how his work as an entrepreneur would resolve the shortage or produce an impact rising to the level of national importance." The existence of policy guidance relating to STEM professionals does not overcome our conclusions, which already took that guidance into account. The *Policy Manual* does not indicate that STEM professionals qualify for the waiver in all cases. Rather, it emphasizes "proposed endeavors that aim to advance STEM technologies and research." *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(2). The Petitioner's proposed endeavor entails provision of IT services to individual clients, which has a more limited impact, and his business plan does not indicate that the Petitioner is engaged in developing new business intelligence technology. Rather, his "customized software . . . [is] based on existing and operational tools."