U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26807965

Date: MAY 18, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks second preference 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 EB-2 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 qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal from that decision; a motion to reconsider; and a motion to reopen. The matter is before us again on motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reconsider.

I. LAW

A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations a motion to reconsider is based on an *incorrect application of law or policy*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, 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.

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reconsider the denial of the petition or the initial

dismissal of the appeal. Instead, the filing before us is a motion to reconsider our most recent decision. Therefore, we cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

We initially dismissed the Petitioner's appeal, which was physically filed, because the signature on it was created by a word processor or other electronic format. The regulations and form instructions specifically disallow the submission of a Form I-290B signed in an electronic format except when it is filed electronically. *See* 8 C.F.R. § 103.2(a)(2); *see also* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations requiring its submission); 8 C.F.R. § 103.3(a)(2)(i) (requiring affected parties to submit an appeal on Form I-290B).

Next, we dismissed the Petitioner's subsequent motion to reconsider because the Petitioner acknowledged that the appeal was signed by a word processor and, therefore, did not meet the signature requirement. Accordingly, the Petitioner's motion to reconsider did not establish that our prior decision on the appeal was based on an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3) (providing that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy).

Most recently we dismissed the Petitioner's motion to reopen because the Petitioner did not offer any new facts supported by documentary evidence on motion demonstrating that we erred in the underlying decision on their motion to reconsider. Again the Petitioner conceded that the signature on appeal "was created by word processor and is not a handwritten mark."

The Petitioner is now before us a third time, this time on motion to reconsider, wherein they attempt to relitigate the basis for their appeal of the Director's initial decision denying their immigrant petition. The Petitioner is wholly silent about our most recent prior decision to dismiss their motion to reopen. The regulation at 8 C.F.R. § 103.5(a)(3) requires a petitioner to state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy applied to the evidence of record at the time of the decision. The Petitioner did not state any reasons for the reconsideration of our most recent prior decision to deny their motion to reopen accompanied by any pertinent precedent decision establishing that our decision was incorrect based on an erroneous application of law of USCIS policy to the existing evidence of record.

So, for the reasons above, the Petitioner has not shown proper cause for reconsideration and has not overcome the grounds for dismissal of the prior motion to reopen. Accordingly, we will dismiss their motion to reconsider.

ORDER: The motion to reconsider is dismissed.