U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19956613

Date: MAR. 29, 2022

Motion on Administrative Appeals Office Decision

Form I-129, Petition for Nonimmigrant Worker (Religious Worker – R-1)

The Petitioner, a religious organization, seeks to classify the Beneficiary as an R-1 nonimmigrant religious worker to perform services as an imam. *See* Immigration and Nationality Act (the Act) Section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant R-1 classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in religious occupations in the United States.

The Director of the California Service Center denied the petition on multiple grounds. Specifically, the Director determined that the Petitioner did not properly file the petition, because the record did not establish that the person who signed the petition was an authorized official permitted to execute the petition on the Petitioner's behalf. *See* 8 C.F.R. § 214.2(r)(7), (8) (2019). In addition, the Director concluded that the Petitioner did not submit verifiable evidence explaining how it would compensate the Beneficiary and did not demonstrate that the Beneficiary qualified to work in the proposed position. *See* 8 C.F.R. § 214.2(r)(3) (defining "minister"), (10), (11).

In August 2020, the Petitioner initiated an appeal, filing a Notice of Appeal or Motion (Form I-290B). It indicated on page 2 of Form I-290B that "I am filing an appeal to the AAO [Administrative Appeals Office]. I will submit my brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal." The Petitioner, however, did not submit an appellate brief or additional evidence to us. As such, we summarily dismissed the appeal. *See* 8 C.F.R. § 103.3(a)(1)(v), (2)(i) (2020).

The matter is now before us on a motion to reconsider the matter. On motion, the Petitioner does not dispute that it did not submit its appellate brief or additional evidence to us. Instead, it claims that it filed the materials with the Director. It offers U.S. Postal Service (USPS) record to substantiate its claim. Upon review, we will dismiss the motion. *See* 8 C.F.R. § 103.5(a)(2).

I. LAW

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record of proceedings at the time we issued the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility

for the requested immigration benefit. In addition, by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i).

As relating to an appeal, the regulation at 8 C.F.R. § 103.3(a)(1)(v) (2020) provides: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Moreover, "[t]he affected party must submit an appeal on Form I-290B" and "must submit the complete appeal including any supporting brief as indicated in the applicable form instructions within 30 days after service of the [Director's] decision." 8 C.F.R. § 103.3(a)(2)(i); *see also* 8 C.F.R. § 103.3(a)(2)(vii) (noting that we may grant a written request for additional time to submit a brief for good cause shown).

Page 2 of the Petitioner's Form I-290B specified that "I am filing an appeal to the AAO. I will submit my brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal." Similarly, page 6 of the Instructions for Notice of Appeal or Motion specified in bold: "Any brief and/or evidence submitted after you file Form I-290B must be sent directly to the AAO." The regulation at 8 C.F.R. § 103.2(a)(1) explains: "The form's instructions are hereby incorporated into the regulations requiring its submission."

II. ANALYSIS

The issue before us is whether the Petitioner has demonstrated on motion that our summary dismissal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence before us when we issued the decision. *See* 8 C.F.R. § 103.5(a)(3). On motion, the Petitioner maintains and provides USPS record showing that after initiating its appeal, it filed the appellate materials with the Director, not with us, contrary to the regulation at 8 C.F.R. § 103.3(a)(2)(i), (vii); the Form I-290B; and the Form I-290B Instructions. The Petitioner has not demonstrated that it had, as required, timely submitted its appellate brief or additional evidence to us before we summarily dismissed its appeal. It has also not established that our summary dismissal was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence then before us. As such, the Petitioner has not satisfied the motion to reconsider requirements, and we will dismiss the motion.

III. CONCLUSION

The Petitioner has failed to establish that our summary dismissal was based on an incorrect application of law or USCIS policy and that our prior decision was incorrect based on the evidence then before us. *See* 8 C.F.R. § 103.5(a)(3). Accordingly, we will dismiss its motion to reconsider the matter, as the motion does not overcome our finding that it did not timely submit to us an appellate brief or additional evidence.

ORDER: The motion to reconsider is dismissed.