



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

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

In Re: 26925871

Date: JUN. 20, 2023

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity under sections 101(a)(15)(U) and 241(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Vermont Service Center denied the petition, concluding that the Petitioner was inadmissible to the United States and had not properly filed Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (waiver application). The Director found that, in the absence of a waiver application, the Petitioner remained inadmissible to the United States and could not be granted U-1 classification. We dismissed a subsequent appeal. 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). We incorporate our prior decision by reference. Upon review, we will dismiss the motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner submits a copy of the Director’s decision, a copy of a request for evidence (RFE) issued by the Director, and a legal brief. The Petitioner asserts that the case merits reopening because 8 C.F.R. § 212.17(b)(3) allows for a waiver application to be refiled after denial. However, the Petitioner has not provided new facts or evidence pertinent to eligibility as required for a motion to reopen. The Petitioner has also not provided a waiver application. Since the attached decisions were part of the appeal record, and the brief submitted does not meet the motion to reopen requirements, the motion to reopen must be dismissed.

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.

The Petitioner first readdresses the previously-rejected waiver application. He notes that this waiver application was accompanied by a fee waiver request; when the fee waiver was denied, the waiver application was rejected and returned. The Petitioner indicates that he subsequently resubmitted a waiver application with a check for the filing fee, but he has not provided proof that this waiver application was properly filed. The Petitioner acknowledges that a filing receipt never arrived and also notes that the filing fee check that accompanied the petition was never cashed.

The Petitioner then contests the correctness of our prior decision. In support of the motion, the Petitioner relies on portions of the Director's decision that he argues were misleading. First, he argues that the Director did not clearly require a resubmission of a waiver application when the RFE was issued. He then contends that the U visa denial was confusing, as it indicated that the waiver application was returned and was not properly filed, but also stated that the waiver application had been denied.

As noted above, our review is limited to the correctness of our latest decision. However, to ensure clarity, we will briefly address the Petitioner's arguments regarding the RFE. The Petitioner argues that the Director's RFE was ambiguous because it did not indicate that a waiver application was absolutely required. However, the Director's RFE was proper in not requiring a waiver application, as petitioners who receive notice from United States Citizenship and Immigration Services (USCIS) of possible inadmissibility have two options in responding. First, if they believe they are not inadmissible, they may rebut USCIS's contention and submit proof of their admissibility. Second, if they acknowledge that a ground of inadmissibility applies, they may submit a waiver application. In response to the Director's RFE, the Petitioner acknowledged that at least one ground of inadmissibility applied to him. He was therefore required to request a waiver of any inadmissibility via a properly filed waiver application.

The Petitioner's second argument regarding the language of the Director's U visa denial decision was not raised on appeal. Regardless, our prior decision adequately explained the posture of the case and removed any ambiguity. We confirmed that, while the Petitioner may have attempted to refile a waiver application, no such application was located in the record. Therefore, the Petitioner had not properly requested a waiver of the applicable grounds of inadmissibility set forth by the Director.

On motion to reconsider, 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).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.