U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22457138

Date: SEPT. 6, 2022

Motion on Administrative Appeals Office Decision

Form I-485, Application for Adjustment of Status of U Nonimmigrant

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on her "U" nonimmigrant status. The Director of the Vermont Service Center (Director) denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), finding that the adverse factors of the Applicant's criminal history outweighed the positive and mitigating equities in her case and, accordingly, she did not warrant adjustment of status to that of an LPR as a matter of discretion. The Applicant filed an appeal, which was summarily dismissed by our office. The matter is now before us on a motion to reconsider. On motion, the Applicant submits a brief and states that the Director erred. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy, and that the decision was incorrect based on the evidence in the record as the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Although the Applicant presents legal arguments on motion, they are ultimately insufficient to establish error in our prior decision.

II. ANALYSIS

We summarily dismissed the Applicant's appeal for failure to articulate an error of law or fact pursuant to 8 C.F.R. 103.3(a)(1)(v) (stating that USCIS "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").

Relevant regulations allow for the submission of a brief or other evidence concurrently with the filing of an appeal. *See* 8 C.F.R § 103.3(a)(2)(vi) (stating that "[t]he affected party may submit a brief with" the filing of an appeal). However, the regulations further specify that, if additional time for the filing of a brief on appeal is needed, "the affected party shall submit the brief directly to" the Administrative Appeals Office (AAO). 8 C.F.R. § 103.3(a)(2)(viii). The relevant form instructions reiterate this requirement. *See* USCIS Form I-290B, Instructions for Notice of Appeal or Motion, at 6 ("Any brief and/or additional evidence submitted after the initial filing of Form I-290B must be submitted directly

to the AAO."); *see also* 8 C.F.R. § 103.2(a)(1) (stating that every form, benefit request, or other document must be submitted "in accordance with the form instructions" and incorporating form instructions "into the regulations requiring [their] submission").

In the present case, the Applicant checked the box on the Form I-290B, Notice of Appeal or Motion, associated with her appeal indicating: "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." However, our review of the record indicates that the brief was submitted to the Vermont Service Center, as opposed to our office, contrary to the requirements of 8 C.F.R. § 103.3(a)(2)(viii), the relevant form instructions, and the box she indicated on the appeal. Furthermore, counsel for the Applicant acknowledges that the brief was filed with the Vermont Service Center. As of the date of our summary dismissal of the Applicant's appeal, no brief or additional evidence had been received by our office. On motion, the Applicant does not address or otherwise identify any error in our summary dismissal. Rather, counsel submits a shipment receipt, which confirms that the brief was incorrectly filed with the Vermont Service Center. Accordingly, the summary dismissal of the Applicant's appeal was not in error and her motion to reconsider is dismissed on this basis.

ORDER: The motion to reconsider is dismissed.