U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25151758

Date: FEB. 13, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust Status

The Applicant seeks to become a lawful permanent resident under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on his derivative "U" nonimmigrant status. The Director of the Vermont Service Center (VSC) denied the Form I-485, Application to Adjust Status. We dismissed the Applicant's subsequent appeal and his first combined motion to reopen and motion to reconsider. The matter is now before us on a second combined motion. The Applicant 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 motions.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that our decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We must dismiss a motion that does not satisfy the applicable requirements. 8 C.F.R. § 103.5(a)(4).

The Applicant received U-3 nonimmigrant status through an approved Form 1-918 Supplement A, Petition for Qualifying Member of U-1 Nonimmigrant. The Applicant timely filed his U adjustment application in February 2019. In August 2020, the Director denied the application, concluding that the Applicant had not established that a favorable exercise of discretion was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest as required under section 245(m) of the Act.

We summarily dismissed the Applicant's appeal because "it did not identify specifically any erroneous conclusion of law or statement of act in the unfavorable decision," as 8 C.F.R. § 103.3(a)(1)(v) requires. In our decision dismissing the Applicant's first combined motion to reopen and motion to reconsider, we acknowledged his assertion that his attorney mistakenly sent the appeal brief to the VSC based on a belief that the Form I-290B had not yet been transferred to our office. However, we noted that the instructions for Form I-290B provide that "[a]ny brief and/or evidence submitted after you file Form I-290B must be sent directly to the AAO, even if the appeal has not yet been transferred to the AAO." Form I-290B, Instructions for Notice of Appeal or Motion, https://www.uscis.gov/sites/default/files/document/forms/i-290binstr.pdf (Dec. 2019 ed.), at 6.

Additionally, we explained that the form instructions are incorporated into the regulations. *See* 8 C.F.R. § 103.2(a)(l) (providing that "[e]very form, benefit request, or other document must be submitted . . . and executed in accordance with the form instructions" and that a "form's instructions are . . . incorporated into the regulations requiring its submission"). Moreover, we observed that the box checked on the Form I-290B wherein the Applicant indicated that a brief and additional evidence would be filed within 30 days states: "I will submit my brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal." Because the Applicant did not submit evidence that he followed the Form I-290B filing instructions or that our prior summary dismissal of his appeal was based on an incorrect application of law or policy, we dismissed the motion to reopen and the motion to reconsider.

In support of his second combined motion, the Applicant again requests that we excuse his attorney's error in mailing the appeal brief to the VSC rather than directly to our office. He states that we failed to consider the evidence he previously submitted regarding his attorney's filing error, which was based on a reasonable misinterpretation of the requirements. He argues that we have "discretion to reopen a case beyond the 30-day deadline if an applicant demonstrates that 'the delay was reasonable and beyond [the applicant's] control'" and cites a list of questions and answers relating to appeals and motions from the USCIS website, https://www.uscis.gov/forms/all-forms/questions-and-answers-appeals-and-motions, as support for his claim. However, the discretion to which he refers relates to our ability to excuse the late filing of a motion to reopen in certain circumstances pursuant to 8 C.F.R. § 103.4(a)(1)(i). There is no corresponding discretion to excuse the failure to specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v). As we have explained, there is no evidence that the Applicant followed the instructions for Form I-290B, which are incorporated into the regulations. Although he also provides evidence relating to his claim that he is eligible for adjustment of status as a matter of discretion, the Applicant does not submit evidence to overcome our prior decision affirming the summary dismissal of his appeal or show that our decision was incorrect based on the evidence in the record at the time of the decision. Accordingly, he has not met the requirements for a motion to reopen or motion to reconsider, and we must dismiss the motions. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.