



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

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

In Re: 26360291

Date: MAR. 27, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Professional)

The Petitioner, a software analysis, design, and development business, seeks to employ the Beneficiary as a computer systems analyst. It requests classification of the Beneficiary as a professional under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act), section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that Beneficiary qualifies for the job offered based on the terms stated on the labor certification. The Petitioner subsequently filed an appeal. We concluded that the Petitioner did not specifically identify an erroneous conclusion of law or statement of fact in the unfavorable decision as a basis for the appeal, nor did it submit a brief to this office despite indicating on the Form I-290B, Notice of Appeal or Motion, that it would do so within 30 days of filing. Accordingly, we summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v).

The matter is now before us on a motion to reopen. 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). Upon review, we will dismiss the motion to reopen.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen to instances where the filing party has shown “proper cause” for that action. Thus, to merit reopening, 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. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The Petitioner maintains that it timely submitted a brief in support of its appeal filed on October 8, 2021, and states that it is submitting evidence that warrants the reopening of its appeal. It provides a copy of its brief dated November 2, 2021 (along with supporting evidence), and a U.S. Postal Service (USPS) mailing receipt and tracking information showing delivery of a package to the U.S. Citizenship

and Immigration Services (USCIS) Vermont Service Center on November 4, 2021. The Petitioner contends that even if its brief “was submitted to the incorrect service center, the material should be forwarded to the proper center or returned to the appellant,” noting that “[t]he service center did neither.”

The regulations require an affected party to submit the complete appeal including any supporting brief as indicated in the applicable form instructions within 30 days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). The record reflects that the Petitioner properly filed its Form I-290B and filing fee at the location designated by the form instructions and indicated it would file a brief and/or evidence with the AAO within 30 days.

The form instructions to the Form I-290B instruct appellants who elect to submit a supplemental brief within 30 days of filing an appeal to mail the brief or additional evidence directly to the AAO. The Petitioner claims that, rather than following these instructions, it mailed its brief to the Vermont Service Center. We note that the submitted USPS receipt does not include any identifying information that associates it with this matter. Further, although the Petitioner indicates that it mailed its brief to the Vermont Service Center, it sought to appeal the unfavorable decision of the Director of the Texas Service Center. The Petitioner has not explained why it would mail its brief to the Vermont Service Center when appealing a decision issued by the Texas Service Center. We cannot determine that the newly submitted mailing receipt constitutes evidence that the appellate brief was mailed to USCIS on the date indicated.

Regardless, even if we concluded that the Petitioner attempted to file a brief in November 2021, the record on motion does not support a determination that the Petitioner properly filed a brief in support of its appeal, as it does not claim to have submitted the brief to this office. The Petitioner appears to view the improper filing of the brief as irrelevant and shift the burden for correcting any filing errors to USCIS. However, its claim that USCIS mishandled the brief is not persuasive. Again, it is the Petitioner’s burden to submit the complete appeal as indicated in the applicable form instructions.

The record before us at the time we summarily dismissed the Petitioner’s initial appeal in November 2022 did not contain a brief or other statement specifically identifying an erroneous conclusion of law or statement of fact in the decision being appealed. While the new evidence submitted in support of this motion includes a copy of an appellate brief, the Petitioner has neither claimed nor presented evidence that the brief was properly submitted in accordance with the form instructions as required by 8 C.F.R. § 103.3(a)(2)(i).

The scope of a motion is limited by regulation to “the prior decision.” 8 C.F.R. § 103.5(a)(1)(i), which in this case was our summary dismissal of the Petitioner’s appeal. As the Petitioner has not shown proper cause for reopening the appeal, we will not address its claims that the Director denied the underlying petition in error.

For the reasons discussed, the Petitioner has not established proper grounds for reopening. Accordingly, the motion to reopen will be dismissed.

ORDER: The motion to reopen is dismissed.