U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21420527

Date: MAR. 31, 2022

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 at sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p).

The Nebraska Service Center Director denied the Petitioner's Form I-918, Petition for U Nonimmigrant Status (U petition) in August 2019. The Petitioner filed an appeal of the U petition, which we dismissed in February 2020 because the signature on the Form I-290B, Notice of Appeal or Motion, was not the Petitioner's. The Petitioner filed a motion to reopen that decision, which we dismissed in July 2020 for failure to satisfy the motion requirements at 8 C.F.R. § 103.5(a)(2). The Petitioner then filed a subsequent combined motion to reopen and reconsider, which we dismissed in August 2021. Now, the Petitioner files a third motion to reopen.

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the Petitioner's motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." We may grant a motion that satisfies the motion requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

In our prior August 2021 decision on the Petitioner's second motion, we noted that we had dismissed the Petitioner's appeal because the record of proceeding reflected that the signature on her Form I-290B appealing the Director's decision did not match the Petitioner's signature on her U petition. As we further explained, the Petitioner's Form I-290B was instead signed by the Petitioner's family member for whom the Petitioner is seeking derivative U nonimmigrant status in separate proceedings, and who is not the affected party in the Petitioner's U petition proceedings. *See*

8 C.F.R. §§ 103.2(a)(2) (requiring that the petitioner or applicant sign their benefit requests), 103.3(a)(1)(iii) (defining "affected party" as the person with legal standing in the proceeding and does not include the beneficiary of a visa petition), (a)(2)(v)(A)(*1*) (an appeal filed by a person not entitled to file it must be rejected as improperly filed). We acknowledged the Petitioner's assertion that our decision was in error and that USCIS had the wrong signature page of the Form I-290B appeal, and we took note of her submission of the signature pages of her U petition and Form I-290B appeal; however, we noted that she submitted these same arguments and evidence in her previous motion. Accordingly, we concluded that the Petitioner had not presented on motion documentary evidence of any new facts that overcame the grounds for dismissal. We further determined that the Petitioner had not established that our previous decision was based on an incorrect application of law and policy, as she cited to provisions in the Act and regulation that were not relevant to the instant proceeding. The Petitioner also did not demonstrate that our previous decision was incorrect at the time of the decision based on the evidence of record at the time, such that reconsideration was warranted. Accordingly, we dismissed the Petitioner's combined motion to reopen and reconsider, finding that she had not satisfied the motion requirements of 8 C.F.R. § 103.5(a)(2), (3).

With the current motion, the Petitioner submits witness affidavits by both counsel for the Petitioner and a paralegal in counsel's office who assisted with the Petitioner's appeal, along with copies of previous USCIS decisions and documents related to her previous filings. Both counsel and the paralegal contend that a clerical error may have taken place in the photocopying and submission of these documents, for which they both take responsibility, and which they acknowledge may have resulted in the submission of a signature page for the Form I-290B that was not signed by the Petitioner. The Petitioner asserts that USCIS may accept a resubmitted benefit request, citing to the *USCIS Policy Manual* in support of this argument, and submits a new Form I-290B, which she contends cures the deficiency in her appeal filing.[1]

While we acknowledge the Petitioner's explanations of clerical error in the initial filing of the Form I-290B appeal, the Petitioner has not provided on this motion any new evidence or facts to demonstrate that her initial appeal was properly filed and signed by her as the affected party at the time she submitted it. *See* 8 C.F.R. § 103.2(a)(2) (requiring the affected parties sign their benefit requests). The Petitioner also cannot cure her deficient appeal submission with a wholly new Form I-290B as she asserts. Although the Petitioner cites the *USCIS Policy Manual* as providing that a deficient signature can be cured by resubmitting a benefit request, it specifies that this is only "as long as all of the other filing requirements are met". 1 *USCIS Policy Manual* B.2(A), https://www.uscis.gov/policymanual. Here, the adverse decision on the Petitioner's U petition was served in August 2019, and an appeal of that decision must have been properly filed, with the Petitioner's signature, within 30 days after the service of the decision, or 33 days if the decision was mailed. 8 C.F.R. §§ 103.3(a)(2)(i), 103.8(b); *see also C.F.R.* § 103.3(a)(2)(v)(B)(*1*) (stating that an appeal not filed within time allocated will be rejected as untimely filed). The Petitioner has not identified, and we are unaware of, any authority that would permit the AAO or USCIS to disregard its own regulations regarding the filing requirements for the Form I-290B. We lack the authority to waive

[1] The Petitioner also requests that her U petition be reopened *sua sponte* and considered on its merits. She asserts that USCIS may reopen or reconsider a decision "when it appears that manifest injustice would occur if the prior decision were permitted to stand." In support of this argument, the Petitioner cites 8 C.F.R. § 103.5(b), which, as she acknowledges, addresses *sua sponte* reopening and reconsideration of denied special agricultural worker and legalization applications when an appeal is filed. Accordingly, this regulation is not applicable to the instant case.

the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (explaining that as long as regulations remain in force, they are binding on government officials). Consequently, the Petitioner's submission of a new Form I-290B bearing her signature with this motion, over two years after the Director's adverse decision, cannot correct the deficiency of her initial appeal filing.

For the foregoing reasons, the Petitioner's present motion to reopen does not overcome the bases for dismissal set forth in our prior decisions through new facts or supporting evidence. *See* 8 C.F.R. § 103.5(a)(2) (motion to reopen requirements). Therefore, the motion to reopen is dismissed.

ORDER: The motion to reopen is dismissed.