U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25747698

Date: MAY 24, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i). The Director of the Nebraska Service Center (Director) denied the waiver application as a matter of discretion, concluding that even if the section 212(i) waiver were granted, the Applicant would remain inadmissible under section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i), for which there is no waiver available.[1] We summarily dismissed the appeal because the Applicant did not identify any specific legal or factual error in the Director's decision on his Form I-290B, Notice of Appeal or Motion, and did not submit his appeal brief and/or additional evidence to us within 30 days of filing the appeal as he indicated on his Form I-290B. The Applicant subsequently filed the instant motions to reopen and reconsider now before us. Upon review, we will dismiss the motions.

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must show 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

The Applicant has not demonstrated that reconsideration is warranted. On motion to reconsider, he submits a brief along with the additional documents he previously intended to submit, including his original appeal brief. However, he does not dispute or assert any error in our prior determination that he did not submit the brief and/or additional evidence within 30 days as he indicated he would on the Form I-290B and that we did not have his promised brief and documents when we adjudicated the appeal. Consequently, the Applicant has not demonstrated that our previous decision was based on an incorrect application of law or policy and that our decision was incorrect based on the evidence then before us at the time. The Applicant therefore has not met the requirements of a motion to reconsider, and we will dismiss this motion. 8 C.F.R. § 103.5(a)(3).

[1] This inadmissibility ground renders inadmissible any noncitizen who the consular officer or U.S. Citizenship and Immigration Services (USCIS) officer knows or has reason to believe is, or has been, or aided or conspired with, a controlled substance trafficker, for which there is no waiver.

The Applicant also has not demonstrated that reopening is warranted. He asserts on motion to reopen that although his former attorney timely sent the appeal brief and documents to us in August 2022, we did not receive them due to "implicit failure" of the delivery system. He further explains that the appeal packet was mistakenly sent using United States Postal Service (USPS) regular mail without a tracking number, which made it impossible to track the mail and resulted in the delivery failure. He also states that his former attorney even inquired about the appeal with USCIS in October 2022 prior to our summary dismissal, but because he was told that no update was forthcoming, "the only option was to await written communication."

We acknowledge the Applicant's explanations that he had in fact timely mailed his appeal brief and supporting evidence. However, although the record on motion now reflects that the Applicant did mail the brief and evidence, he did so to the wrong USCIS address rather than directly to us, as required. The Form I-290B instructions specifically require that any appeal brief and/or evidence submitted *after* filing a Form I-290B "must be sent directly" to us. As the Applicant mailed the appeal brief and evidence to the wrong address, they were not part of the record before us at the time of our adjudication of the appeal in November 2022. The Applicant's new evidence and explanations on motion therefore do not show that he properly filed his appeal brief and evidence with us prior to our adjudication of his appeal. Consequently, our summary dismissal of the appeal was proper.

Although the Applicant also relies on the motion regulations to assert the delay or failure in properly filing the appeal brief should be excused, they do not relate to his circumstances. While 8 C.F.R. § 103.5(a)(1)(i) allows an exception to a late filing of a *motion to reopen* where the delay was reasonable and beyond one's control, the issue here involves the Applicant's *appeal* and whether an appeal brief and evidence were properly filed pursuant to 8 C.F.R. § 103.3(a)(2)(i) (stating that the appealing party must submit an appeal on Form I-290B and also must submit the complete appeal including any supporting brief and evidence as indicated in the Form I-290B instructions within 30 days of filing the appeal). Further, although the regulations, for good cause shown, permit us to grant more time to submit an appeal brief upon a written request for additional briefing time, the record does not show that the Applicant had ever sought such request with us, that we granted it, and that he then submitted his appeal brief directly to us, as required. *See* 8 C.F.R. § 103.3(a)(2)(vii), (viii).

Accordingly, the Applicant has not established that reopening or reconsideration of our prior decision is warranted. Additionally, even if the Applicant established that we erred in summarily dismissing his appeal, the record does not indicate, and the Applicant does not claim, that he is currently an applicant for immigrant visa, adjustment of status, or any other qualifying underlying application to be eligible to seek a waiver of inadmissibility. 8 C.F.R. § 212.7(a)(1). Thus, reopening and reconsideration of our prior decision is otherwise not warranted because he does not appear to be eligible for the requested waiver under section 212(i) of the Act.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.