



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

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

In Re: 33863486

Date: SEP. 17, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Professional

The Petitioner, a healthcare services provider, seeks to permanently employ the Beneficiary as a physical therapist. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a noncitizen for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary met the minimum qualifications for the offered position. Specifically, the Director concluded that the record did not include evidence that the Beneficiary possessed a "PT license or Vermont Licensing Authority Approval to take the NPTE," the Petitioner's requirement for the offered position.

We summarily dismissed a subsequent appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v). 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.

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).

On motion, the Petitioner does not address our prior decision summarily dismissing the appeal. The Petitioner submits evidence that the Beneficiary was issued a New York physical therapy license on November 8, 2023. The Petitioner asserts that the Beneficiary “passed the National Physical Therapy Examination (NPTE) and is now awaiting issuance of his ministerial Vermont Physical Therapy license.”

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 does not assert that it submitted a timely brief to this office or that it otherwise identified a basis for the appeal. Nor does the record on motion support a determination that the Petitioner properly filed a brief in support of its appeal.

The record before us at the time we summarily dismissed the Petitioner’s initial appeal in April 2024 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 “Appeal 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).¹

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.

¹ Even if the Petitioner had timely submitted the appellate brief and supporting evidence, we note that the evidence submitted on motion does not overcome the basis for denial of the underlying petition, Form I-140, Immigrant Petition for Alien Worker. The petition in this matter was filed on March 2, 2023. A petitioner must establish eligibility for the requested benefit as of the petition’s filing date. *See* 8 C.F.R. § 103.2(b)(1). As noted above, the new evidence submitted on motion demonstrates that the Beneficiary obtained his physical therapy license in November 2023, eight months *after* the petition’s filing. Further, the evidence does not demonstrate that the Beneficiary was approved to take the NPTE by the Vermont licensing authority before the petition’s filing date in March 2023.