



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

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

In Re: 20844140

Date: NOV. 23, 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 Director of the Vermont Service Center denied the Petitioner’s Form I-918, Petition for U Nonimmigrant Status (U petition), concluding that the Petitioner did not establish that he was the victim of qualifying criminal activity. We summarily dismissed the Petitioner’s subsequent appeal, and the matter is now before us on a combined motion to reopen and motion to reconsider. 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 decisions to establish that the decision was based on an incorrect application of law or policy, and establish 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). The burden of proof is on a petitioner 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, 376 (AAO 2010).

The Petitioner filed his U petition in February 2016, which was denied by the Director in May 2021, concluding that the Petitioner did not establish that he was the victim of qualifying criminal activity. In September 2021, we summarily dismissed the Petitioner’s appeal because “it did not identify specifically any erroneous conclusion of law or statement of act in the unfavorable decision,” as required. 8 C.F.R. § 103.3(a)(1)(v). In our decision, incorporated here by reference, we also advised the Petitioner that, although he indicated on his Form I-290B, Notice of Appeal or Motion (Form I-290B), that he would submit a brief and additional evidence within 30 days, we had not received either. The Petitioner now files a motion to reopen and reconsider our summary dismissal.

On motion, the Petitioner contends that the summary dismissal of his appeal was incorrect. The Petitioner states that counsel’s office mailed the brief to the Vermont Service Center, but the Vermont Service Center forwarded his Form I-290B to our office on the same day the brief arrived, presumably before being matched with each other, which is why our office did not receive the brief. In support of his contentions, the Petitioner submits copies of a receipt and delivery confirmation from FedEx indicating that an envelope with a matching tracking number was sent by his counsel to the Vermont

Service Center on July 19, 2021, and received there on July 20, 2021. The Petitioner also submits a copy of a USCIS notice advising him that his Form I-290B was transferred to our office on July 20, 2021.

Although the Petitioner has provided evidence that he attempted to file his brief in support of the appeal, the documentation submitted on motion indicates that he did not send the brief directly to the AAO's mailing address. The instructions for the Form I-290B provide the following mailing instructions for petitioners who file a brief within 30 days of filing an appeal: "Any 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. For the AAO's mailing address, visit www.uscis.gov/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 (Form I-290B Instructions); *see also* 8 C.F.R. § 103.2(a)(1) (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, the Petitioner indicated on the Form I-290B that a brief and additional evidence would be filed within 30 days of filing the appeal in March 2021. Absent evidence demonstrating that he followed these instructions and mailed his brief to the correct mailing address, the Petitioner has not provided new facts or new evidence that would overcome our decision to summarily dismiss his appeal. Accordingly, the motion to reopen will be dismissed.

We will also dismiss the Petitioner's motion to reconsider because he has not demonstrated that the summary dismissal of his appeal was incorrect based on the evidence of record at the time of the initial decision. Additionally, he does not claim that our summary dismissal decision was based on an incorrect application of law or policy. For the reasons discussed, our summary dismissal decision was consistent with USCIS policy and the regulation at 8 C.F.R. § 103.3(a)(1)(v).

The Petitioner has not satisfied the requirements for a motion to reopen or a motion to reconsider. Accordingly, we will dismiss both motions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.