U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37114868

Date: APR. 11, 2025

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a hydrologist, seeks classification as an individual of extraordinary ability in the sciences. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that she met the classification's initial evidentiary requirements. We dismissed a subsequent appeal and three motions, two of which were filed untimely. The matter is now before us on combined motions to reopen and reconsider.

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.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish 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 proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

Motions must be filed within 30 days of the adverse decision they seek to reopen or reconsider, or within 33 days if that decision was served by mail. 8 C.F.R. §§ 103.5(a)(1), 103.8(b). A late-filed motion to reopen may be excused as a matter of discretion if it is demonstrated that the delay was reasonable and beyond the filer's control. 8 C.F.R. § 103.5(a)(1)(i).

In this instance, the Petitioner seeks to have us reopen and reconsider our motion dismissal of November 13, 2024. The Form I-290B, Notice of Appeal or Motion, was received at the designated

filing location on December 24, 2024, which is 41 days after the decision. First, because there is no legal basis for accepting a late-filed motion to reconsider, this motion must be dismissed for not meeting the applicable filing requirements. 8 C.F.R. § 103.5(a)(4).

The next issue is whether the Petitioner has established that we should excuse her late-filed motion to reopen in the exercise of discretion. 8 C.F.R. § 103.5(a)(1)(i). To demonstrate that the filing delay was reasonable and beyond her control, the Petitioner provided a letter stating that she had a car crash and that "it has not been easy . . . to handle all this pressure of not having a car, not having a job," and having limited financial means. To support this claim, she provided evidence including letters from community members attesting to her circumstances and character and South Carolina state government documentation indicating that the Petitioner was involved in a car crash on November 23, 2024, or 23 days before the motion filing deadline.

The state government documentation does not state any details about the car crash beyond where and when it happened and what vehicles were involved. The support letters only speak to the circumstances that caused the Petitioner's prior untimely filings such her health and divorce. The letters do not mention the car crash or any other reason that the present motion was filed late. There is also no medical documentation or other evidence in the record establishing how the car crash caused the filing delay, and so we cannot determine whether or not the length of the delay was reasonable under the circumstances.

Because the Petitioner has not demonstrated that her late-filed motion to reopen should be excused as a matter of discretion, she has not met the applicable filing requirements. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.