U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37804117

Date: APR. 21, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an Oracle EBS consultant, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner had not established his eligibility for the underlying EB-2 classification or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner subsequently filed an appeal and two motions to reconsider, which we dismissed. The matter is now before us as a third motion to 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). We review the questions in this matter de novo. *Matter of Christo's*, Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the motion.

A motion to reconsider must be filed within 33 calendar days of the decision that the motion seeks to be reconsidered. See 8 C.F.R. §§ 103.5(a)(1)(i) (providing a motion on an unfavorable decision must be filed within 30 calendar days of the date of the decision), 103.8(b) (providing 3 days shall be added to the prescribed period when notice is served by mail). There is no provision for us to excuse an untimely filing of a motion to reconsider. 8 C.F.R. §§ 103.5(a)(1)(i). Therefore, an untimely motion to reconsider must be dismissed.

The Petitioner's motion to reconsider was filed 52 calendar days after the date we mailed the decision he requested we reconsider and is therefore untimely filed. We acknowledge the Petitioner's statements that, but for his motion being rejected for the incorrect fee amount, it would have been timely filed. However, as noted, there is no provision for us to excuse an untimely filing of a motion to reconsider. Moreover, each form, benefit request, or other document requiring a fee payment by regulation must be filed with the correct fee(s). 8 C.F.R. § 103.2(a)(1), (a)(7)(D); see generally 1 USCIS Policy Manual B.3, https://www.uscis.gov/policy-manual (providing, as guidance, requestors

must include the required fee amount, which is controlled by regulation, with the submission of a benefit request to USCIS).

ORDER: The motion to reconsider is dismissed.