U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37697717

Date: APR. 23, 2025

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Professional)

The Petitioner, an importer, sought to employ the Beneficiary as business manager. The company requested his classification under the employment-based, third-preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). Businesses may sponsor aliens for U.S. permanent residence in this category to work in jobs requiring at least bachelor's degrees. *Id.*

After first granting the filing, Service Center Operations (SCOPS) revoked the petition's approval. SCOPS concluded that the Petitioner did not demonstrate the Beneficiary's qualifying experience for the offered job. Affirming SCOPS' decision, we dismissed the Beneficiary's appeal.[1] *See In Re: 25609696* (AAO Oct. 12, 2023). We also dismissed his following three motions.

The matter returns to us on the Beneficiary's combined motion to reopen and reconsider. He contends that we disregarded his claim that "circumstances beyond his control" should have excused the untimely filing of his prior motion to reopen.

In these revocation proceedings, the Beneficiary bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). Upon review, we acknowledge that we should have considered his request to excuse the late filing of his prior motion to reopen. But, because he has not demonstrated that circumstances beyond his control caused the untimely filing, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish that our prior decision misapplied law or policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, regulations limit the scope of our review to our latest decision. 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.

[1] SCOPS found that the Beneficiary qualifies for treatment as an "affected party" in these revocation proceedings because he established eligibility to "port" to a new job under section 204(j) of the Act, 8 U.S.C. § 1154(j), and properly requested permission to port. *See Matter of V-S-G- Inc.*, Adopted Decision 2017-06, at *14 (AAO Nov. 11, 2017).

II. ANALYSIS

The Beneficiary states that, after we dismissed a prior motion of his on September 6, 2024, he submitted a combined motion to reopen and reconsider on October 8, 2024. He sent the combined motion by overnight delivery service and states that he expected SCOPS to timely receive the motion the following day, the 33rd day after our mailing of the decision. *See* 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b)(1) (requiring a motion's filing within 33 days of a decision's mailing).

Checking the motion's status on October 9, 2024, counsel states that she learned that the delivery service had not picked up the package the prior day from the drop-off location. Counsel states that, to ensure the motion's delivery within the 33-day deadline, the Beneficiary paid for the package's hand-delivery to SCOPS that same day. The record contains a copy of the delivery's receipt.

Counsel stated that, although SCOPS timely received the motion on October 9, 2024, the SCOPS ultimately rejected the submission "without providing a clear reason." Counsel stated that she received the rejected filing on October 23, 2024. She believed the submission's Form I-290B, Notice of Appeal or Motion, contained a "clerical error" omitting the requested immigrant classification. *See* 8 C.F.R. § 103.2(a)(1) (requiring execution of every form "in accordance with the form instructions"). She corrected the form and resubmitted the motion. But she stated: "The correction made was not the reason for the rejection, and thus it was rejected again."

The record lacks a copy of the first rejection notice. The second rejection notice, which counsel stated provides the same explanation as the first, states that Part 2 of the Form I-290B, "Information about the Appeal or Motion," "has not been fully completed." Counsel stated that, after her receipt of the second rejection notice on November 12, 2024, she noticed that Part 2 of the Form I-290B mistakenly indicated the Beneficiary's filing of both an appeal and motion. Counsel stated that she corrected this inadvertent error and, on November 14, 2024, resent the motion, which SCOPS accepted for filing.

Our January 10, 2025 decision dismissed the motion as untimely filed, as SCOPS received the final corrected motion more than 33 days after the decision's September 6, 2024 mailing. *See* 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b)(1).

The Beneficiary contends that our "rigid application of the 33-day deadline, without consideration of the delays caused by circumstances outside his control, is both unreasonable and unjust." He notes that we have discretion to excuse a motion to reopen's untimely filing "where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." 8 C.F.R. § 103.5(a)(1)(i). He states that, despite his submission of evidence explaining his motion to reopen's untimeliness, we disregarded his request to excuse the untimely submission.

We acknowledge that we should have considered excusing the untimely motion to reopen. But the record does not demonstrate that circumstances beyond his control caused the motion's filing delay. Rather, the record identifies the primary cause of the motion's late filing as the error on the Form I-290B designating the submission as both an appeal and a motion. Counsel stated that she or an employee of her firm inadvertently made that error. The mistake understandably confused SCOPS as to what type of filing the Beneficiary intended. Both the Beneficiary and counsel signed the motion's Form I-290B, attesting that they had reviewed it for accuracy before submitting it. Also, parties are

generally bound by their attorneys' conduct during representation. *Guzman-Rivadeneira v. Lynch*, 822 F.3d 978, 981 (7th Cir. 2016) (discussing "the general rule that aliens are bound by the representations of their lawyers"); *Matter of Gawaran*, 20 I&N Dec. 938, 942 (BIA 1995) (citation omitted) (finding that, absent egregious circumstances, an attorney's conduct in their professional capacity binds their client). Thus, contrary to 8 C.F.R. § 103.5(a)(1)(i), the Beneficiary has not established that the filing delay was beyond his control.

The Beneficiary argues that SCOPS' rejection notices did not clearly identify the reason for the motion's rejections. Counsel asserts her discovery of the reason "only by sheer luck and diligent review." But the record indicates that the notices attributed the rejections to a problem in Part 2 of the Form I-290B, which asks a limited number of questions about the filing.

The Beneficiary demonstrated that we erred by not considering his request to excuse his prior untimely motion to reopen. But our error was harmless, as he has not established that the delay in the motion's filing was beyond his control. *See Singh v. Gonzales*, 404 F.3d 1024, 1028 (7th Cir. 2005), *overruled on other grounds by Kucana v. Mukasey*, 533 F.3d 534, 538 (7th Cir. 2008) (noting that the harmless error doctrine applies to immigration cases); *see generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors). We therefore decline to excuse the late filing.

III. CONCLUSION

The combined motion to reopen and consider does not demonstrate the Beneficiary's eligibility for the requested benefit. We will therefore affirm our prior decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.