U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42415818

Date: APR. 24, 2026

Motion on Administrative Appeals Office Decision

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

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

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. We dismissed a subsequent appeal. Since then, the Petitioner has filed six combined motions to reopen and reconsider. The most recent combined motion was dismissed as untimely. The matter is now before us on a combined motion to reopen and 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). Upon review, we will dismiss the combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(l)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

As an initial matter, we must dismiss the combined motion, because the underlying case is materially identical to a pending immigration benefit request, as described in 8 C.F.R. § 103.2(a)(7)(iv).

The regulation at 8 C.F.R. § 103.2(a)(7)(iv) states:

> Unless otherwise provided in this title, only one of the same benefit request as defined in 8 CFR 1.2 may be submitted at a time or while the same request is pending. If more than one materially identical requests are submitted, USCIS may reject one at its discretion.

USCIS records reflect that the Petitioner filed another petition, identified as [redacted], which seeks the same immigration benefit as the matter that is currently pending before the AAO. We have reviewed the records of proceeding for both benefit requests and conclude that they are materially identical. A petitioner generally cannot receive two or more identical immigration statuses, classifications, visas, or benefits. Accordingly, we are dismissing the combined motion before us based on the filing of a subsequent identical request.

Further, in our most recent decision dated January 7, 2026, we dismissed the combined motion because it was untimely filed. We mailed the previous decision, dismissing the Petitioner's fifth combined motion on October 17, 2025. The subsequent Form I-290B, Notice of Appeal or Motion, was received at the designated filing location on November 20, 2025, which is 34 days after the decision. Pursuant to 8 C.F.R. §§ 103.5(a)(1)(i) and 103.8(b), motions must be filed within 30 days of the adverse decision (or 33 days after 3 days added for mailing). An untimely filing of a motion to reopen may be excused in the discretion of U.S. Citizenship and Immigration Services (USCIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i).

In the instant combined motion, the Petitioner contends his Form I-290B "was mailed within the 33-day deadline via United States Postal Service (USPS) Priority Mail Express on November 19, 2025, the final day of the filing period. The one-day delay in USCIS receipt was caused solely by the postal service delivery timeline, a circumstance entirely beyond [the Petitioner's] control."[1] Pursuant to 8 C.F.R.§ 103.2(a)(7)(i), we "will consider a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing." *See generally* 1 *USCIS Policy Manual* B.6(C), https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-6. Here, in order for the motion to be timely filed, the package needed to be received by the location designated for filing by the "33-day deadline." However, the Petitioner confirms that the prior motion was received 34 days after the decision and has not shown that the delay in filing his motion to reopen was reasonable and beyond his control, such that his untimely filing should be excused in USCIS' discretion under 8 C.F.R. § 103.5(a)(l)(i). Additionally, the Petitioner has not established that our previous decision dismissing the motion to reopen as untimely was incorrect.[2] Moreover, there is no provision for us to excuse an untimely filing of a motion to reconsider, therefore, our previous decision regarding the motion to reconsider was not in error. *Id.*

In conclusion, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion, nor has he established that our prior decision was based on an incorrect application of law or policy at the time we issued it. Additionally, the underlying case is materially identical to a pending immigration benefit. Therefore, the motions will be dismissed. 8 C.F.R. § 103.2(a)(7)(iv) and 8 C.F.R. § 103.5(a)(4).

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[1] The Petitioner submits evidence on motion to confirm he mailed a USPS package on November 19, 2025, to USCIS in [redacted] Arizona and it was sent via priority mail express.

[2] We note that motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial based on newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323, (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)); see also *Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. *INS v. Abudu*, 485 U.S. at 107.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.