U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37891251

Date: APR. 25, 2025

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 an advanced degree professional, 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 the Petitioner established she is an advanced degree professional but did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal and two subsequent motions—first, a combined motion to reopen and motion to reconsider, followed by a motion to reconsider, both of which we dismissed as untimely. The matter is now before us again on a third motion—this time 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 motions.

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). By regulation, our review is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). We must dismiss any motion that does not satisfy the relevant motion requirements. 8 C.F.R. § 103.5(a)(4).

On motion, the Petitioner submits a copy of her previously filed motion to reconsider and our decision dismissing that motion because it was untimely filed. In her statement, the Petitioner acknowledges that her prior motion was filed after the deadline but asserts that reopening and reconsideration are warranted because the error related to her filing fee was "unintentional" and "promptly addressed in accordance with USCIS guidelines."

The Petitioner's motions will be dismissed. The Petitioner last filed a motion to reconsider, which was required to have been filed within 33 days of the decision that the motion seeks to reconsider.

8 C.F.R. § 103.5(a)(1)(i), 103.8(b). While the Petitioner argues that the delayed filing was made in good faith and under reasonable circumstances, the regulations do not contemplate an exception for the untimely filing of a motion to reconsider. 8 C.F.R. § 103.5(a)(1)(i); *see generally AAO Practice Manual*, Ch. 4.6(c), https://www.uscis.gov/aao-practice-manual (providing that, while the AAO may excuse the failure to timely file a motion to *reopen* upon a showing that the delay was reasonable and beyond the petitioner's control, the regulations provide no corresponding discretion to excuse an untimely motion to *reconsider*). Therefore, while we acknowledge the Petitioner's explanations for her untimely filing, she has not offered new facts showing we erred in our prior decision or demonstrated that our prior dismissal was based on an incorrect application of law or policy. Because we have no basis to reopen or reconsider our prior decision, the motions will be dismissed.

The Petitioner also requests that we nevertheless evaluate the merits of her previously filed motions and underlying petition. We decline to do so. As discussed above, the Petitioner has not established that our prior decision dismissing her untimely motion to reconsider was incorrect, and so we do not reach her arguments regarding eligibility for a national interest waiver. We will not adjudicate the petition anew, and the underlying petition will remain denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.