U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39297524

Date: AUG. 11, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks classification as an individual of extraordinary ability. *See* 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.

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner had not demonstrated a one-time achievement or satisfaction of at least three of the ten categories of evidence. We dismissed the Petitioner's appeal and subsequent combined motions to reopen and reconsider. The matter is now before us again, on second 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 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. 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).

Furthermore, under 8 C.F.R. § 103.5(a)(1) and 8 C.F.R. § 103.8(b), in general, motions must be filed within 33 days of the adverse decision. The regulation at 8 C.F.R. § 103.2(a)(7)(i) explains that the filing date is "the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format." In addition, 8 C.F.R. § 103.5(a)(1)(iii)(B) specifies that a motion filing must include a fee payment of the correct amount. As relating to a motion to reopen the proceeding, the filing deadline may be excused if a petitioner demonstrates that the delay was reasonable and was beyond their control. 8 C.F.R. § 103.5(a)(1)(i).

In our prior decision, we dismissed the Petitioner's combined motions to reopen and reconsider as they were untimely filed, as the Petitioner did not establish that his motion to reopen was untimely filed due to a delay that was reasonable and beyond his control, and further noted that the regulations at 8 C.F.R. § 103.5(a)(1) do not allow for the untimely filing of a motion to reconsider.

With the instant motions, the Petitioner acknowledges that his prior motions were not timely filed and asks for a "discretionary excusal of filing deadline." The Petitioner states that the "delay resulted from a good-faith error in completing the Form I-290B, which led to a rejection notice due to delayed delivery of USCIS [U.S. Citizenship and Immigration Services] correspondence – a factor entirely beyond [his] control." The Petitioner has not provided evidence that the delay was beyond his control, as he acknowledges that his initial attempt at filing his combined motions were rejected due to an error on his part.

Our decision on the Petitioner's appeal was issued on October 16, 2024, and the initial attempt at filing his first combined motions was received by SCOPS on November 15, 2024. SCOPS issued the rejection notice on November 20, 2024. As such, he did not establish that USCIS "delayed" the delivery of his rejection notice. The Petitioner further states that "the delay was not intentional and that [he] made every effort to meet the filing deadline in good faith." However, as stated above and in our prior decision, an untimely filing of a motion to reopen may only be considered if a petitioner establishes that the delay was reasonable and beyond their control, and we have no discretion to excuse the untimely filing of a motion to reconsider. The Petitioner does not provide any relevant citation that concludes that we have the discretion to excuse an untimely motion to reconsider, and he does not establish that the delay in filing his motion to reopen was reasonable and beyond his control. As such, he has not overcome our prior decision.

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.