U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
5900 Capital Gateway Drive, Mail Stop 2090
Camp Springs, MD 20588-0009

U.S. Citizenship and Immigration Services

In Re: 36167434 Date: FEB. 13, 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 either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish eligibility for the underlying immigrant classification, or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director also dismissed the subsequent combined motions to reopen and reconsider. On appeal, we withdrew the Director's motions decision and remanded the matter. The Director again dismissed the combined motions, and we dismissed a subsequent appeal and a second motion to reopen and reconsider, determining that the Petitioner did not demonstrate that the proposed endeavor was of national importance. We then dismissed a third motion to reopen because the Petitioner did not timely file the motion. The matter is now before us on a fourth motion to reopen.

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 motion.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). In this case, our latest decision dismissed the Petitioner's third motion to reopen because he did not timely file the motion.

A motion must be filed within 30 days of the decision that it seeks to reopen, or within 33 days if that decision was served by mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). The date of filing is the date U.S. Citizenship and Immigration Services (USCIS) received the Form I-290B, Notice of Appeal or

Motion, completed, signed, and accompanied by the required fee at the designated location as specified by the Form I-290B instructions. See 8 C.F.R. §§ 103.2(a)(1) and 103.2(a)(6). A late filed motion may be excused as a matter of discretion "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).

We will only consider new evidence and arguments to the extent they pertain to our latest decision summarily dismissing the untimely filed third motion to reopen. For the third motion, we received the completed Form I-290B with the required fee at the designated location on August 28, 2024, which was 43 days after our prior decision dated July 16, 2024. On the motion before us, the Petitioner claims that the delay in filing the third motion was both reasonable and beyond his control. The Petitioner states that he initially mailed the third motion to USCIS within the required filing timeline, but it was rejected by USCIS.[1] After the rejection, the Petitioner indicates that he subsequently re-mailed the third motion, which was accepted for filing on August 28, 2024.

Other than indicating the initial mailing of the third motion was rejected, the Petitioner has no further explanation or evidence to show that the delay in filing the third motion was reasonable or beyond his control. The record indicates that our decision dated July 16, 2024, properly gave the Petitioner notice concerning the 33-day deadline to file a motion to reopen or reconsider and also directed him to USCIS' Form I-290B website (www.uscis.gov/i-290b) for current information on filing fee, filing location, and other filing requirements. The Petitioner's reliance on the initial mailing being rejected by USCIS does not persuasively establish that the motion's tardiness was reasonable and beyond his control.

Accordingly, the Petitioner has not shown that the delay in filing the third motion to reopen was reasonable and beyond his control, such that its untimely filing should be excused in USCIS' discretion under 8 C.F.R. § 103.5(a)(1)(i). Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

[1] A benefit request which is rejected does not retain a filing date. 8 C.F.R. § 103.2(a)(7).