U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37117691

Date: FEB. 13, 2025

Motion on Administrative Appeals Office Decision

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

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

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner had not established a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the appeal and subsequently filed combined motion to reopen and to reconsider. The matter is now before us on a second combined motion to reopen and 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 motions.

A motion on an unfavorable decision must be filed within 33 calendar days of the date we mailed the decision. 8 C.F.R. §§ 103.5(a)(1), 103.8(b). On November 1, 2024, we mailed the Petitioner a notice of dismissal of his combined motions because they were filed 58 days after the date of the appeal decision and were therefore untimely. On December 13, 2024, the Petitioner again filed combined motions, but they were filed 42 days after the date of the dismissal of the prior combined motions.

As an initial matter, while 8 C.F.R. § 103.5(a)(1)(i) allows U.S. Citizenship and Immigration Services (USCIS) to excuse a late motion to reopen "where it is demonstrated that the delay was reasonable and was beyond the [the affected party's] control," there is no similar regulation for a late filed motion to reconsider. Rather, any motion to reconsider must be filed within 30 days of the unfavorable decision. 8 C.F.R. § 103.5(a)(1)(i) (emphasis added). Three days is added to the prescribed period for decisions sent by mail. 8 C.F.R. § 103.8(b). Consequently, the motion to reconsider, which was filed after 33 days of the unfavorable decision, is dismissed.

Here, although the Petitioner includes documentation evidencing that he attempted to file the current combined motions on November 22, 2024, the filing was rejected because he did not fully complete the section of the Form I-290B, Notice of Appeal or Motion, providing information about the appeal

or motion. However, the Petitioner's documentation does not establish the Petitioner's error resulting in the delay was reasonable and beyond his control. As a result, the Petitioner's motion to reopen is also dismissed.[1]

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed

[1] The Petitioner's brief and documentation also addressed the lateness of his prior combined motions. However, the lateness of his current combined motions has not been overcome.