U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41247812

Date: FEB. 18, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, an industrial and quality engineer, seeks employment-based second preference (EB-2) classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 Petitioner did not establish eligibility for the underlying EB-2 classification or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the appeal and three motions to reconsider. The most recent motion to reconsider was dismissed as untimely filed. We subsequently dismissed a motion to reopen. The matter is now before us on 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 motion.

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). 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

A motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider or 33 days if the decision is served by mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). The filing date is the date USCIS properly receives a filing in accordance with filing instructions. *See generally* 1 *USCIS Policy Manual* B.6(C), https://www.uscis.gov/policy-manual.

On motion, the Petitioner contests the correctness of our prior decision. While the Petitioner acknowledges that the motion to reconsider was untimely filed, he asserts that we should exercise discretion to excuse the late filing. While the regulations provide limited discretionary authority in

certain circumstances for motions to reopen, they do not provide similar discretion for untimely motions to reconsider. Under 8 C.F.R. § 103.4(a)(1)(i), a motion to reconsider must be filed within 30 days of the date of the decision. The regulation does not authorize USCIS or the AAO to excuse an untimely motion to reconsider. Unlike motion to reopen, which may, in limited circumstances, be treated as timely filed if the delay was reasonable and beyond the control of the petitioner, the regulations governing motions to reconsider contain no comparable provision permitting the exercise of discretion to excuse late filing. The Petitioner's request that we exercise discretion to accept the untimely filing is therefore without regulatory basis.

Here, the Petitioner does not demonstrate that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

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.