U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41460959

Date: FEB. 24, 2026

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner, a jewelry store, seeks to employ the Beneficiary as a jeweler. It requests classification of the Beneficiary under the third-preference, immigrant category as a skilled worker. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based category allows a U.S. business to sponsor an alien for lawful permanent resident status based on a job offer requiring at least two years of training or experience.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish: (1) that the Petitioner is the successor-in-interest of the entity that had previously obtained the labor certification submitted with the petition; (2) the claimed predecessor and successor entities' continuous ability pay the proffered wage of $42,536 per year; and (3) that the Beneficiary met the minimum requirements for the offered position. SCOPS dismissed a combined motion to reopen and reconsider. The Petitioner subsequently filed several appeals and motions with us, which we dismissed or, in the case of the Petitioner's second appeal, rejected. The matter is now before us on 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 petitioner must file a motion to reconsider within 30 days of the decision that the motion seeks to reconsider, adding three days when that decision was served by mail. A petitioner must file a motion to reopen within that same 33 days, but we have discretion to excuse a late filing if the petitioner demonstrates that the delay was reasonable and beyond the petitioner's control. *See* 8 C.F.R. §§ 103.5(a)(1)(i) and 103.8(b).

The following chronology establishes the dates relevant to this decision:

- January 10, 2025: The Petitioner filed a motion on our decision from July 8, 2024.
- February 25, 2025: We dismissed the January 2025 motion as untimely.
- April 28, 2025: The Petitioner filed a motion to reconsider our February 2025 decision. In that motion, the Petitioner did not address the untimely filing of its January 2025 motion. Instead, the Petitioner argued the merits of the underlying petition.

- June 20, 2025: We dismissed the April 2025 motion as untimely.
- July 23, 2025: The Petitioner filed a timely motion to reconsider our June 2025 decision. Again, the Petitioner did not address the untimely filing of its April 2025 motion, arguing instead that we should have considered newly submitted evidence.
- October 16, 2025: We dismissed the July 2025 motion because it did not address the grounds for our June 2025 decision.
- November 18, 2025: The Petitioner filed the motion now before us in response to our October 2025 decision. The Petitioner submits new tax return documents, states that it seeks to contest our June 2025 decision, and argues that we should accept an untimely filing as a matter of discretion.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, the only issues properly before us now are the issues discussed in our October 2025 decision.[1] The Petitioner does not address those issues.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner submits a copy of its 2024 income tax return. The Petitioner asserts that this return addresses the denial of the underlying petition by establishing the Petitioner's ability to pay the Beneficiary's proffered wage as required by 8 C.F.R. § 204.5(g)(2).

The scope of a motion is limited to the prior decision, which in this case is our October 2025 decision. We based that decision on a determination that the Petitioner's July 2025 filing did not address the sole issue – timeliness – in our June 2025 decision. The Petitioner's 2024 tax return does not address that issue.[2]

These prior decisions rested on procedural grounds, which the Petitioner does not address. The 2024 tax returns are new evidence, because they did not exist at earlier stages of the proceeding, but these new tax returns do not address the procedural basis for the prior motion's dismissal.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it

[1] In seeking to dispute our earlier decision from June 2025, the Petitioner claims: "The delay in submission was the result of USCIS error, which caused the filing deadline to be miscalculated and prevented timely filing of the I-290B." The Petitioner does not identify the "USCIS error" or explain how it "caused the filing deadline to be miscalculated." The bare assertion of unspecified error does not suffice. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). Furthermore, the Petitioner *did* file a timely motion after our June 2025 decision, which we dismissed for reasons unrelated to timeliness.

[2] Also, SCOPS originally denied the petition based on three different grounds. The Petitioner's latest filing addresses only one of those grounds, and therefore would not have the potential to change the outcome of the underlying decision on this or the other two grounds. Further, a 2024 tax return does not address the underlying issue of the Petitioner's continuing ability to pay, and that of its claimed predecessor, from the 2016 priority date onward as required by 8 C.F.R. § 204.5(g)(2).

pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

We therefore conclude that the Petitioner's latest filing does not meet the requirements of a motion to reopen, and we will dismiss the motion. *See* 8 C.F.R. § 103.5(a)(4).

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). As noted above, the scope of a motion is limited to the prior decision, and therefore 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.

In this case, the Petitioner has not identified any incorrect application of law or policy in our October 2025 decision, and has not shown that the last decision was incorrect based on the evidence in the record at the time of that decision. The only stated purpose of the Petitioner's latest motion is to introduce the new 2024 tax return into the record. The submission of new evidence is not grounds for reconsideration, because it cannot show that prior decisions were incorrect based on the evidence in the record at the time of those decisions.

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

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.