U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 41713003

Date: FEB. 25, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, a specialist mechanic, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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 record did not establish that the Beneficiary is eligible as an individual of exceptional ability. SCOPS also determined that the Petitioner did not establish that the Beneficiary merits a waiver of the EB-2 classification's job offer requirement, and thus of a labor certification. We later dismissed the Petitioner's appeal. The matter is now before us again on a combined motion 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 motion to reopen and the motion to reconsider.

## I. MOTION TO RECONSIDER

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.

On motion, the Petitioner acknowledges that it filed the current Form I-290B, Notice of Appeal or Motion, in an untimely fashion on December 11, 2025, or 74 days after the date our prior decision to dismiss the appeal was issued on September 29, 2025.

Any motion to reconsider an action by the U.S. Citizenship and Immigration Service (USCIS) must be filed by a petitioner within 30 days of the decision that the motion seeks to reconsider. 8 C.F.R. §

103.5(a)(1)(i). The regulations provide no exception to this requirement. Therefore, as the motion to reconsider was untimely filed, it must be dismissed.

## II. MOTION TO REOPEN

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).

As discussed above, the Petitioner filed the motion to reopen untimely. Any motion to reopen a proceeding before USCIS must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

On motion, the Petitioner contends that we should accept the motion to reopen "nunc pro tunc.[1]" The Petitioner asserts that they filed the Form I-290B on October 31, 2025, but that it was rejected "because the payment was invalid/declined by the bank." The Petitioner states that it mailed the I-290B in a timely manner and the "only deficiency was the unanticipated bank rejection." The Petitioner contends that it had no control over internal bank processing, a "technical payment decline," and "security flags on the card."

As we are not a court of law, we have no power to apply the remedy sought by the Petitioner, namely its reference to nunc pro tunc relief. We are bound by the applicable regulations here, which indicate that the Petitioner must file a timely motion to reopen. The Petitioner does not dispute that the motion to reopen was untimely filed. As such, the issue for us to analyze is whether the delay was reasonable and beyond the control of the Petitioner.

First, we conclude that the Petitioner's delay was not reasonable. USCIS issued a rejection notice related to the current I-290B on November 5, 2025, indicating that the required payment for the form was "invalid due to incomplete information" causing the payment to be declined. The Petitioner claims on motion that it "immediately acted to correct the issue once notified." However, the completed Form I-290B was not received by us until December 11, 2025, or 36 days after the Petitioner's receipt of the prior rejection notice. Therefore, we do not see the delay in correcting the payment error as reasonable.

Second, we determine that the Petitioner did not establish that the untimeliness of the motion to reopen was beyond its reasonable control. The Petitioner states that a declined payment by its bank is beyond its reasonable control. However, it provides no explanation as to why the payment was declined, vaguely citing various potential reasons such as "internal bank processing," a "technical payment

[1] [Latin "now for then"] (17c) Having retroactive legal effect through a court's inherent power <the court entered a *nunc pro tunc* order to correct a clerical error in the record>. Black's Law Dictionary (12th ed. 2024).

decline," or "security flags on the card." We cannot discern whether the untimeliness was beyond the Petitioner's reasonable control without understanding the full circumstances as to why the payment for the motion to reopen was declined.

Therefore, the Petitioner has not sufficiently demonstrated that the untimely motion to reopen should be excused based on a reasonable delay and reasons beyond the control of the Petitioner. For this reason, the motion to reopen must be dismissed.

**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.