U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36142580

Date: JAN. 15, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a historical architect, seeks employment-based second preference (EB-2) classification as a member of the professions holding an advanced degree, 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).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for the requested national interest waiver. We dismissed a subsequent appeal, three successive combined motions to reopen and reconsider, as well as a subsequent motion to reopen. Thereafter the Petitioner filed two successive combined motions to reopen and reconsider, the latest of which we dismissed as untimely. The matter is now before us on 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 combined motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). 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). 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). Accordingly, our review on motion is limited to reviewing our October 2024 dismissal of the combined motion to reopen and reconsider as untimely.

A motion to reopen must be filed within 30 days of the decision or 33 days if the decision is served by mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). While we may excuse an untimely motion to reopen in our discretion where it is demonstrated that the delay was reasonable and beyond the control of the Petitioner, the regulations do not provide similar discretion to excuse an untimely motion to reconsider. *Id.*

On motion, the Petitioner submits a statement asserting that the delay in filing her combined motion to reopen and reconsider was due to FedEx's failure to provide same-day delivery service on the day she attempted to send her motion, which was the filing deadline. She states that on the Sunday prior to filing her motion, she was informed by a FedEx representative to create an account and request same-day delivery service. However, when she went to the FedEx office the following morning to send her motion she was informed that they could not provide same-day delivery for her package. Accordingly, the Petitioner sent the motion via FedEx overnight, resulting in the motion's delivery after the filing deadline. She provides a print-out from FedEx.com discussing the company's same-day delivery services, an email confirming the creation of her FedEx account on the filing deadline, as well as her receipt from FedEx which indicates that the package would be sent via overnight delivery for delivery after the filing deadline. Accordingly, the Petitioner contends that she sent the package in a timely manner, and the delay in the motion's delivery was beyond her control.

The filing date is the date USCIS properly receives a filing in accordance with filing instructions.[1] Filing deadlines are essential to the function of the immigration system so that the agency and the affected party may bring cases to a final conclusion. *See Matter of Morales-Morales*, 28 I&N Dec. 714, 716 (BIA 2023). "Filing deadlines . . . necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced." *Id.* (quoting *United States v. Locke*, 471 U.S. 84, 101 (1985)).

Here, because the Petitioner has not shown that her decision to rely on FedEx to offer same day delivery was beyond her control, the Petitioner has not shown that our October 2024 decision to dismiss her combined motion to reopen and reconsider was erroneous. The Petitioner did not explain why she waited until the last day of the filing period to mail her motion. Accordingly, although the Petitioner provides new facts and supporting evidence to support her explanation for the delay in filing her previous combined motion to reopen and reconsider, she does not establish that her motion was timely or that the delay in filing her motion was reasonable or beyond her control such that the delay should be excused.

The Petitioner has also not established that reconsideration is warranted. The regulations state that the date of filing is the actual date of receipt at the designated filing location, not the mailing date. 8 C.F.R. § 103.2(a)(7)(i). Here, as stated we do not have discretion to accept a late filed motion to reconsider. Moreover, because the record did not establish the Petitioner's delay in filing her motion to reopen was reasonable and beyond her control, she has not established that our decision was incorrect as a matter of law or policy.

As the Petitioner has not satisfied the requirements for reconsideration and the new facts and evidence she submitted do not overcome of our previous determination, the motion must be dismissed. 8 C.F.R. § 103.5(a)(2), (3).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] *See generally* 1 *USCIS Policy Manual* B.6(C), https://www.uscis.gov/policy-manual.