U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35504749

Date: JAN. 22, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant 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 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 the record did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner subsequently filed a motion to reopen and motion to reconsider, which the Director dismissed as untimely filed. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

The sole issue before us on appeal is whether the Director properly dismissed the Petitioner's motion to reopen and motion to reconsider as untimely filed. Motions to reopen or reconsider 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). Here, the record reflects that the Director's decision was issued on June 17, 2024, and that the Petitioner's Form I-290B, Notice of Appeal or Motion, was received by USCIS on July 19, 2024, 32 days after that decision.[1] Since the Petitioner's Form I-290B was received within 33 days of the decision, the motions appear to have been timely filed. Therefore, we will remand the matter for the Director to adjudicate the motions on their merits.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[1] The Petitioner submitted a mailing receipt and delivery confirmation page with his appeal.