U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36546330

Date: JAN. 23, 2025

Motion on Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1A Manager or Executive)

The Petitioner intends to operate as an information technology company and seeks to temporarily employ the Beneficiary as the chief executive officer of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. Section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding the record did not establish that the Petitioner had a qualifying relationship with the Beneficiary's foreign employer. We dismissed the Petitioner's appeal, and dismissed a subsequently filed motion to reopen and motion to reconsider as untimely. 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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(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).

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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

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). The date of filing is not the date of mailing, but the date USCIS received the intended motion: (1) completed, signed, and accompanied by the required fee as specified by the Form I-290B, Notice of Appeal or Motion (Form I-290B) instructions; and (2) at the location that those instructions designate for filing motions. *See* 8 C.F.R. §§ 103.2(a)(1) and 103.2(a)(6). U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, excuse the untimely filing of a motion to reopen where the record demonstrates that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i). There is no comparable authority to excuse an untimely filed motion to reconsider. *See id.*

We dismissed the Petitioner's combined motion to reopen and reconsider as untimely on September 11, 2024. The Petitioner was afforded 30 days plus three days for service by mail to file a motion to reopen and/or reconsider our decision. USCIS did not receive the completed and signed Form I-290B with the required fee at the designated USCIS location until November 24, 2024, 75 days after our decision was issued.

As noted, the late filing of the Petitioner's motion to reconsider may not be excused. 8 C.F.R. § 103.5(a)(1)(i). With respect to its motion to reopen, the Petitioner has the burden to establish that the late filing was reasonable and beyond its control and should therefore be excused. On motion, the Petitioner acknowledges that the motion, initially received by USCIS on October 18, 2024, was rejected because it was not accompanied by the required fee, and asserts that the payment issue was the result of a "clerical error." The Petitioner further asserts that because the error regarding payment "was unintentional and does not reflect any lack of diligence on our part," the motion should be accepted nunc pro tunc.[2]

Apart from this general assertion, the Petitioner has offered no further explanation showing that the delay was reasonable and beyond its control. The record indicates that our September 11, 2024 decision properly gave the Petitioner notice concerning the 33-day deadline to file a motion to reopen or reconsider and also directed the Petitioner to USCIS' Form I-290B website (www.uscis.gov/i-290b) for current information on filing fee, filing location, and other filing requirements. The Petitioner's reliance on a "clerical error" does not persuasively establish that the motion's tardiness was reasonable and beyond its control. Therefore, we will dismiss the motion to reopen.

Accordingly, the Petitioner has not shown that its delay in filing its motion to reopen was reasonable and beyond its control, such that its untimely filing should be excused in USCIS' discretion under 8 C.F.R. § 103.5(a)(1)(i). Moreover, we have no authority to excuse the late filing of its motion to reconsider. Accordingly, we will dismiss the motions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] The Petitioner's reference to the nunc pro tunc doctrine appears to connote that we could remedy its mistake with a nunc pro tunc action. However, it was the Petitioner's error in failing to submit the required fee that resulted in the motion being initially rejected and thus untimely filed. Filings which were rejected because they were submitted with incorrect filing fees do not retain filing dates. 8 C.F.R. § 103.2(a)(7)(ii).