U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32152030

Date: JUL. 17, 2024

Motion on Administrative Appeals Office Decision

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

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

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish his eligibility for EB-2 classification or for the requested national interest waiver. We summarily dismissed the Petitioner's appeal. The Petitioner subsequently filed combined motions to reopen and reconsider, which we dismissed as untimely filed. 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 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).

We dismissed the Petitioner's first motion based on a determination that his Form I-290B, Notice of Appeal or Motion, was untimely filed. We mailed our decision summarily dismissing the Petitioner's appeal on July 7, 2023. A motion on an unfavorable decision must be filed within 33 days of the date U.S. Citizenship and Immigration Services (USCIS) mailed the decision. 8 C.F.R. § 103.5(a)(2), 103.8(b). Therefore, any motion requesting reopening and/or reconsideration of our decision was due on or before August 9, 2023. The Petitioner's prior motion was received at the USCIS designated filing location on September 1, 2023, 56 days after the date of our decision.

In a statement submitted in support of the instant motion to reopen, the Petitioner asserts that "according to the [USPS] label attached as proof, our response was sent within the required timeframe." The Petitioner provides a copy of a USPS Click-N-Ship Label Record printed on August 9, 2023. The label record indicates a "ship date" of August 9, 2023, and an expected delivery date of

August 11, 2023. The instructions accompanying this self-service shipping label state that users must either schedule a package pickup, take the package to a post office, or drop the package in a USPS collection box. Users are further instructed to "mail your package on the 'Ship Date' you selected when creating this label."

The USPS label record demonstrates that the Petitioner created a mailing label on August 9, 2023; it is not accompanied by evidence that the package was in fact mailed via USPS on that date and delivered to a USCIS facility on the expected delivery date of August 11, 2023. The Petitioner has not provided a USPS delivery confirmation associated with the tracking number on this mailing label or other evidence of the actual date of mailing and delivery. As noted, USCIS records reflect that the package was delivered at the designated filing location on September 1, 2023.

Further, even if the Petitioner established that the package containing its prior motion was in fact mailed on August 9, 2023, and delivered to the designated filing location on the "expected delivery date" of August 11, 2023, this would not change the outcome of our prior decision. As noted, to properly file the motion, the Petitioner needed to ensure that it was *received* at the USCIS designated filing location within 33 days of our July 7, 2023, decision, or no later than August 9, 2023. Here, the Petitioner seeks to demonstrate that he *mailed* the Form I-290B on August 9, 2023; he does not claim that USCIS timely received its prior motion on or before that date.

Finally, the regulation at 8 C.F.R. § 103.5(a)(1)(i) states that the untimely filing of a motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. Here, the Petitioner did not provide an explanation for the untimely filing and therefore, provided no basis for USCIS to excuse the late filing of the motion to reopen as a matter of discretion.

Accordingly, the Petitioner has not provided new facts or new evidence in support of the motion to reopen that would overcome our decision to dismiss his prior motion as untimely filed.

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). Although the Petitioner filed a combined motion to reopen and reconsider, he does not assert that our prior decision was based on an incorrect application of law or policy or that it was incorrect based on the record before us when we issued our prior decision. The Petitioner has not met the requirements of a motion to reconsider.

For the reasons discussed, the Petitioner has not provided proper cause for reopening or reconsideration of our prior decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.