U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38042896

Date: JUNE 23, 2025

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner had not demonstrated a one-time achievement or satisfaction of at least three of the 10 categories of evidence. We dismissed the Petitioner's appeal and five subsequent motions. The matter is now before us on a combined motion to reopen and motion to 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 motion.

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).

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. 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).

In general, motions must be filed within 33 days of the adverse decision. 8 C.F.R. §§ 103.5(a)(1), 103.8(b). The filing date is "the actual date of receipt at the location designated for filing such benefit

request whether electronically or in paper format." 8 C.F.R. § 103.2(a)(7)(i). However, as a matter of discretion, we may excuse a petitioner's failure to file a motion to reconsider, but not a motion to reopen, within the filing period if the delay was reasonable and it was beyond the petitioner's control. 8 C.F.R. § 103.5(a)(1)(i).

We incorporate by reference our analysis in our decision on the Petitioner's appeal and on the subsequent motions. By way of summation, and in relevant part, we dismissed the Petitioner's fourth motion on September 27, 2024, as untimely. In October 2024, the Petitioner submitted an improperly completed Form I-290B, Notice of Appeal or Motion, which U.S. Citizenship and Immigration Services (USCIS) rejected. The Petitioner then resubmitted another Form I-290B, his fifth motion, which USCIS received on November 4, 2024, more than 33 days after the date of the preceding decision. In our decision on the fifth motion, we noted that the reason for the Petitioner's failure to file it within the filing period—having submitted an improperly completed Form I-290B in the interim—was within the Petitioner's control and, thus, ineligible for discretionary excuse for untimeliness provided at 8 C.F.R. § 103.5(a)(1)(i). Therefore, we dismissed the Petitioner's fifth motion as untimely. We further noted that, even if the Petitioner had timely filed the fifth motion, it would not have established new facts relevant to our latest decision that would warrant reopening of the proceedings, or shown that we erred as a matter of law or USCIS policy that would warrant reconsideration of our preceding decision.

Now, on the Petitioner's sixth motion, he does not assert a new fact, nor does he submit documentary evidence that may support such a new fact. Therefore, the sixth motion does not satisfy the requirements of a motion to reopen, and it will be dismissed. 8 C.F.R. § 103.5(a)(2).

Turning to the Petitioner's motion to reconsider before us, he characterizes his improper completion of the Form I-290B submitted in October 2024—indicating that the same submission is both an appeal and a motion—as "demonstrat[ing] continued diligence by the [P]etitioner and extraordinary circumstances." The Petitioner further requests us to apply the claim-processing rule analysis of *Matter of Morales-Morales*, 28 I&N Dec. 714 (BIA 2023), to the fifth motion and disregard its untimeliness.[1]

The form instructions for Form I-290B inform petitioners, in relevant part, "Although you may be eligible to file both an appeal and a motion, you may file only one or the other using a single Form I-290B. If you select a box for both an appeal and a motion, we may dismiss or reject your form."

Contrary to the Petitioner's assertions, his attempt to file a single Form I-290B as both an appeal and a motion does not demonstrate "continued diligence" by him. Rather, it demonstrates that he did not properly follow the Form I-290B form instructions, which specifically indicate that USCIS may reject a Form I-290B that improperly purports to be both an appeal and a motion. *See also* 8 C.F.R. § 103.2 (a)(7)(ii) (providing that USCIS will reject improperly executed forms).

[1] In *Matter of Morales-Morales*, the Board of Immigration Appeals determined that it may accept otherwise untimely appeals where a party can establish equitable tolling applies, because 8 C.F.R. § 1003.38(b), which pertains to appeals before the Board, is a claim-processing rule, not a jurisdictional provision. *Matter of Morales-Morales*, 28 I&N Dec. at 716-17. *Matter of Morales-Morales* does not address 8 C.F.R. § 103.5(a)(1)(i), which pertains to motions before the Administrative Appeals Office (AAO).

Moreover, the Petitioner asserts that the improperly completed Form I-290B "attempted to appeal the above decision of AAO on [another, prior] untimely filing," but our decision dismissing an untimely motion is not subject to an appeal. *See, e.g.,* 8 C.F.R. § 103.3(a)(1)(ii)-(iii) (providing that only certain decisions may be appealed, and that USCIS informs petitioners when a decision may be appealed). Therefore, we would have rejected the Petitioner's improper attempt to appeal our decision dismissing the underlying untimely motion, even if he had not attempted to file such an appeal together with a motion on the same Form I-290B.

Next, we need not determine here whether we should apply the claim-processing rule analysis of *Matter of Morales-Morales* to the fifth motion and disregard its untimeliness. As noted above, in our decision dismissing the Petitioner's fifth motion, we nevertheless addressed that, even if the Petitioner had timely filed it, it would not have established new facts relevant to our latest decision that would warrant reopening of the proceedings, or shown that we erred as a matter of law or USCIS policy that would warrant reconsideration of our preceding decision. Thus, regardless of whether we determined if the claim-processing rule analysis of *Matter of Morales-Morales* should apply, we already explained that we would have otherwise dismissed the Petitioner's fifth motion on its merits. Therefore, applying the claim-processing rule analysis of *Matter of Morales-Morales* would not affect the result.

Moreover, as explained above, the regulation at 8 C.F.R. § 103.5(a)(1)(i) already provides discretion to excuse a petitioner's failure to file a motion to reconsider within the filing period if the delay was reasonable and it was beyond the petitioner's control, and we specifically addressed that in our prior decision. For the reasons explained above, we correctly applied the regulation at 8 C.F.R. § 103.5(a)(1)(i) to the facts at the time of our decision, determining that the Petitioner's failure to file the motion to reconsider—and the motion to reopen combined with it—was within the Petitioner's control and, thus, ineligible for discretionary excuse for untimeliness. Because the Petitioner's current motion does not establish that the preceding decision was based on an incorrect application of law or USCIS policy, it does not satisfy the requirements of a motion to reconsider, and it will be dismissed. 8 C.F.R. § 103.5(a)(3).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.