U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39912367

Date: JUNE 25, 2026

Motion on Administrative Appeals Office Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner seeks classification as an immigrant investor pursuant to the Immigration and Nationality Act (the Act) Section 203(b)(5), 8 U.S.C. § 1153(b)(5). This fifth preference (EB-5) classification makes immigrant visas available to aliens who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees.

U.S. Citizenship and Immigration Services (USCIS) denied the petition, concluding that the Petitioner did not establish that the funds invested in the NCE were from lawful sources and that the required amount of the Petitioner's own capital had been, or was in the process of being invested. We dismissed a subsequent appeal. The Petitioner then filed combined motions to reopen and reconsider, which we dismissed as untimely. The matter is now before us on second 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 motion.

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

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)(l)(i), 103.8(b). The date of filing is the date USCIS receives the intended motion: (1) completed, signed, and accompanied by the required fee as specified by the Form I-290B, Notice of Appeal or Motion, instructions; and (2) at the location that those instructions designate for filing motions. *See* 8 C.F.R. §§ 103.2(a)(l) and 103.2(a)(6). 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)(l)(i). There is no comparable authority to excuse an untimely filed motion to reconsider. *See id.*

We dismissed the Petitioner's appeal on March 27, 2025. In that decision, we discussed the merits of the petition. Upon dismissal of the appeal, the Petitioner had 33 days to file a motion. *See* 8 C.F.R. § 103.5(a)(1)(i). A timely motion had to be filed no later than April 29, 2025. USCIS did not receive the completed and signed Form I-290B with the required fee at the designated USCIS location until April 30, 2025. Accordingly, the Petitioner did not timely file the motion, as it was received 34 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)(l)(i).

With respect to his motion to reopen, the Petitioner has the burden to establish that the late filing was reasonable and beyond his control and should therefore be excused. *See* 8 C.F.R. § 103.5(a)(l)(i). On motion, the Petitioner requests we reconsider our decision dismissing his prior motion for untimely filing. The Petitioner claims he initially attempted to file the motion at the USCIS Dallas Lockbox on April 29, 2025, using a private courier to physically hand-deliver the Petitioner's Form I-290B. However, he claims the USCIS Dallas Lockbox would not accept delivery from the private courier because it was not an acceptable courier. The Petitioner further explains that the private courier could not arrange for an official courier, FedEx, to deliver the motion that same day, therefore the motion was delivered via FedEx the next day, April 30, 2025. With this motion, the Petitioner submits a FedEx receipt, an airline passenger ticket confirmation, and a brief with additional documentation relating to his motion contesting our dismissal of the appeal on the merits.

The instructions for Form I-290B, Notice of Appeal or Motion, state on page 6:

> Where To File?
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> Please use our website at www.uscis.gov/i-290b for the most current information about where to file this appeal or motion.

Filing guidance at www.uscis.gov/i-290b provides information for filing forms at a USCIS Lockbox, stating, "[y]ou may send your forms using only USPS, FedEx, DHL, or UPS, but no other couriers."

The USCIS website provides specific information about acceptable couriers for filing petitions and applications, noting no other couriers may be used to physically deliver petitions and applications for filing. Because the Petitioner's initial private courier could not deliver the package, the Petitioner explains that he arranged for FedEx to send the motion to the USCIS Dallas Lockbox on April 29 to be delivered on April 30, 2025. Government records indicate the USCIS Dallas Lockbox received the prior motion on April 30, 2025, after the filing deadline.

Every form, benefit request, or other document must be submitted and executed in accordance with the form instructions. 8 C.F.R. § 103.2(a)(1). Here, the Form I-290B instructs petitioners where and how to file motions disputing Administrative Appeals Office decisions. Other than indicating he

initially attempted delivery to the USCIS Dallas Lockbox via a private courier on April 29, 2025, the filing deadline, the Petitioner has no further explanation or evidence to show that the delay in filing the prior motion was reasonable or beyond his control. The record indicates that our decision dated March 27, 2025, properly gave the Petitioner notice concerning the 33-day deadline to file a motion to reopen or reconsider and also directed him 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 the initial delivery being made via a private courier and delivered the day after via FedEx courier does not persuasively establish that the motion's tardiness was reasonable and beyond his control.

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

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.