U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38808265

Date: JUN 26, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a geologist, seeks employment-based second preference (EB-2) classification as an individual of exceptional ability, as well as a national interest waiver (NIW) of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner met the initial evidentiary requirements for EB-2 classification as an individual of exceptional ability, and that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal, concluding that the Petitioner did not satisfy the EB-2 requirements while we reserved our analysis relating to his NIW claims. The Petitioner filed two successive motions to reopen, which we dismissed because the Petitioner had not met the requirements of a motion to reopen. We also dismissed the Petitioner's third motion to reopen because it was untimely filed. The matter is now before us 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). 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).

On motion, the Petitioner submits a brief along with a UPS shipping label and delivery confirmation. He asserts that his third motion to reopen was timely filed and that he "acted in good faith to meet all the filing requirements." The Petitioner explains that his prior motion was submitted using an outdated version of the Form I-290B, which he claims was an "honest and unintentional error." He contends that his error led to the rejection of his filing by U.S. Citizenship and Immigration Services (USCIS), and that the delay in refiling using the correct form should be

excused. The Petitioner requests that we exercise our discretion to accept the untimely filed motion arguing that the delay was caused solely by the need to resubmit the filing with the current version of the form.

The applicable regulations state that a motion on an unfavorable decision must be filed within 33 days of the date USCIS mails the decision. *See* 8 C.F.R. §§ 103.5(a)(1), 103.8(b). Failure to timely file a motion to reopen "may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." 8 C.F.R. § 103.5(a)(1)(i). The Petitioner's prior motion was properly received on November 15, 2024, 46 days after the date of our decision. While we acknowledge the Petitioner's explanation and his assertion that the use of the outdated form was unintentional, he has not established that the delay in filing was both reasonable and beyond his control, as required. We, therefore, decline to excuse the late filing as a matter of discretion.

Accordingly, although the Petitioner has submitted additional evidence in support of his motion to reopen, he has not provided new facts or new evidence 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). 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.

On motion to reconsider, the Petitioner requests that we reconsider our dismissal of his untimely filed motion. However, the Petitioner does not explain how we erroneously dismissed his last motion. The Petitioner also does not explain how our appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. The Petitioner, therefore, has not met the requirements of a motion to reconsider.

Although the Petitioner has submitted a brief in support of the motion to reopen, the Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our appellate decision. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, we will dismiss the Petitioner's motion to reopen and motion to reconsider. 8 C.F.R. § 103.5(a)(4

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.