U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30587450

Date: MAR. 21, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an aircraft mechanic, seeks classification as a member of the professions holding an advanced degree and an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualified for the underlying EB-2 classification or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's subsequent appeal. 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).

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.

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, 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). 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 appeal on August 28, 2023. 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 October 6, 2023, 39 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 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. Here, the Petitioner does not provide an explanation for the untimely filing of the motion; therefore, he has not met this burden. We therefore will not exercise our discretion to excuse the late filing of his motion to reopen.

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)(1)(i). Moreover, we have no authority to excuse the late filing of his motion to reconsider. Accordingly, we will dismiss the motions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.