U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37768497

Date: MAY 20, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an historical architect, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver 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).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for the requested national interest waiver. We dismissed a subsequent appeal, three successive combined motions to reopen and reconsider, a subsequent motion to reopen, and three additional combined motions to reopen and reconsider. Of those recent motions, the fifth was dismissed for not meeting motion requirements, the sixth was dismissed as untimely,[1] and the seventh was dismissed for insufficient evidence to reopen or reconsider the dismissal based on the timeliness issue. The matter is now before us again 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 combined 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).

Our most recent dismissal—that of the Petitioner's seventh motion—addressed the Petitioner's motion brief, which asserted that the delay in filing her sixth motion was due to FedEx's failure to provide same-day delivery service on the day she attempted to send that motion, which was the day of the

[1] The Petitioner's fifth motion was dismissed on August 14, 2024, and the decision informed the Petitioner that any motion on that decision must be received within 33 days, which would have been September 16, 2024. The Petitioner's subsequent motion—her sixth—was dismissed as untimely because it was received September 17, 2024, 34 days after the decision date.

filing deadline. Prior to sending her sixth motion, when the Petitioner was informed by FedEx that her package would not be delivered the same day, she utilized FedEx's overnight service, resulting in the delivery taking place after the filing deadline. The Petitioner provided documentation relating to her FedEx transaction, contending that proof that her sixth motion was sent on the last day it would be accepted meant that she had sent the package in a timely manner. She surmised that the delivery of her sixth motion after the last day it would be accepted as filed as timely filed was, therefore, beyond her control.

Our most recent dismissal explained that a motion to reopen 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). We noted that while we may excuse an untimely motion to reopen in our discretion where it is demonstrated that the delay was reasonable and beyond the control of the Petitioner, the regulations do not provide similar discretion to excuse an untimely motion to reconsider. *Id.* We also explained that the filing date is the date U.S. Citizenship and Immigration Services (USCIS) properly receives a filing in accordance with filing instructions.[2] Filing deadlines are essential to the function of the immigration system so that the agency and the affected party may bring cases to a final conclusion. *See Matter of Morales-Morales*, 28 I&N Dec. 714, 716 (BIA 2023). "Filing deadlines . . . necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced." *Id.* (quoting *United States v. Locke*, 471 U.S. 84, 101 (1985)).

Because the Petitioner had not shown on her seventh motion that the filing delay of her sixth motion was reasonable and beyond her control, she did not establish that our decision to dismiss her sixth motion as untimely was erroneous. We also observed in our dismissal of the Petitioner's seventh motion that she did not explain why she waited until the last day of the filing period to mail her sixth motion. Although the Petitioner provided new facts and supporting evidence to explain the process of sending her sixth motion—asserting that it should be considered timely based on the date it was sent, rather than the date it was received—she did not establish that her motion was received by USCIS in accordance with filing instructions or that the delay in filing her motion was reasonable or beyond her control such that the delay should be excused.

The Petitioner's present combined motion reiterates her previous discussion concerning the delivery delay and includes new information. She submits a brief in which she provides the following (quoted as written):

a- My decision to rely on FedEx to offer same day delivery was beyond my control.
b- My motion was timely and delay in filing my motion was reasonable or beyond my control such that the delay should be excused.
c- I provided new facts and supporting evidence to support my explanation for the delay in filing my previous motions to reopen and reconsider, as they were beyond my control.
d- I didn't explain before why I waited until the last day of the filing period to mail my motion, and there were two factors:

[2] *See generally* 1 *USCIS Policy Manual* B.6(C), https://www.uscis.gov/policy-manual.

d-1- "Mental Health Challenges": My son was the victim of assault on August 1st, 2024, shortly before I received the denial letter, dated August 14th, 2024, and he was seriously injured. Because of the seriousness of his injuries and his long recovery time, as a parent I was very disturbed and I faced mental health issues myself that impacted my ability to perform.
d-2- "Legal Representation Issues": My attorney was not available to assist me in preparing the motion and all the pressure was on myself.

Despite the above facts, I met the deadline and my motion was timely but the decision to rely on FedEx to offer same day delivery was beyond my control. My motion was timely and delay in filing my motion was reasonable or beyond my control such that the delay should be excused. Therefore, with the above mentioned and documents, my delay in filing my motion to reopen was reasonable and beyond my control and that your decision was incorrect as a matter of law or policy, and I hope you can kindly reopen my file and reconsider your decision.

Along with her brief, the Petitioner provides a document dated August 1, 2024, from [redacted] titled "After Visit Summary." The document depicts the patient as a twenty-six-year-old individual diagnosed with facial injuries and instructions for care. The Petitioner relies on her previous assertion that her choice to send her combined motion via FedEx overnight services—which would and did result in the package's delivery after the period in which she was permitted to file a motion—was beyond her control, now newly citing mental health challenges and the absence of the availability of her attorney as reasons for the delay in filing her motion.

While the hospital visit summary is a new fact submitted to the record, it does not support the reopening of our previous decision for several reasons. For example, although the document names the patient treated, it is not evident how the patient is linked to the Petitioner; she is not named on the document and no other evidence is provided depicting the identity of the patient or the patient's relation to the Petitioner. In addition, the document does not in itself explain why the Petitioner was unable to timely respond to the dismissal of her fifth motion, which was due more than six weeks after the date of the hospital visit. Although the Petitioner asserts that an incident involving her son impacted her ability to submit her sixth motion within the acceptable filing period, she does not include documentary evidence to support her claim that the injury and her resulting "mental health issues… impacted [her] ability" to submit a response to her fifth motion dismissal within the allowed 33-day timeframe. Finally, regarding the absence of her attorney, the Petitioner did not submit documentary evidence to support the claim or indicate how that absence prevented her from timely filing her motion.[3] The Petitioner has not established that the filing delay was reasonable and beyond her control.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided

[3] The asserted new facts must be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2); *see Matter of Chawathe*, 25 I&N Dec. at 376 (a petitioner must support assertions with relevant, probative, and credible evidence).

new facts to establish that we erred in dismissing the prior motion, her seventh. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

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). 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.

The Petitioner has not established that reconsideration is warranted. The regulations state that the date of filing is the actual date of receipt at the designated filing location, not the mailing date. 8 C.F.R. § 103.2(a)(7)(i). Here, as stated in our most recent decision, we do not have discretion to accept a late filed motion to reconsider. Moreover, because the record did not establish the Petitioner's delay in filing her motion to reopen was reasonable and beyond her control, she has not established that our decision was incorrect as a matter of law or policy.

As the Petitioner has not satisfied the requirements for reconsideration and the new facts and evidence she submitted do not overcome our previous determination, the motion must be dismissed. 8 C.F.R. § 103.5(a)(2), (3).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.