U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34968976

Date: NOV. 13, 2024

Motion on Administrative Appeals Office Decision

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

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

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish 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 and motion. 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 motion.

A petitioner's motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider. A petitioner's motion to reopen a proceeding must be filed within 30 days of the decision that the motion seeks to reopen, but we have the discretion to excuse a delay in filing if the petitioner demonstrates that the delay was reasonable and was beyond the petitioner's control. *See* 8 C.F.R. § 103.5(a)(1)(i). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

We dismissed the Petitioner's appeal on January 10, 2024. She filed a combined motion to reopen and reconsider on May 23, 2024, and we dismissed it as untimely. The Petitioner argues that her late filing should be excused because she mailed the motion within the required timeframe and relied on the delivery services of a government agency, the U.S. Postal Service, for timely receipt by U.S. Citizenship and Immigration Services (USCIS).

The deadline for filing a timely motion to reopen or reconsider was February 12, 2024, accounting for the 30-day filing period and three days for mailing. *See* 8 C.F.R. §§ 103.5(a)(1)(i) and 103.8(b). The filing date is the date USCIS properly receives a filing in accordance with filing instructions. *See generally* 1 *USCIS Policy Manual* B.6(C), https://www.uscis.gov/policy-manual. The regulation at 8

C.F.R. § 103.5(a)(1)(i) does not permit any extension of the filing deadline for motions to reconsider. Therefore, we must dismiss the motion to reconsider as untimely. The same regulation states that untimely filing of a motion to reopen may be excused in our discretion where the petitioner demonstrates that the delay was reasonable and beyond the petitioner's control. However, the Petitioner's reliance on USPS is not sufficient to establish that the delay in filing was beyond her control. Therefore, we will dismiss the motion to reopen.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.