U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34905180

Date: NOV. 14, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a construction and building inspector, seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 Petitioner did not qualify for the EB-2 classification as an individual of exceptional ability nor as an individual holding an advanced degree, and did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

The Petitioner appealed the Director's decision, and we summarily dismissed the appeal as the Petitioner did not identify any specific legal or factual error in the Director's decision on his Form I-290B, Notice of Appeal or Motion (Form I-290B), and did not submit his brief and/or additional evidence to us within 30 days of filing the appeal as he indicated on his Form I-290B. We dismissed a subsequent combined motion to reopen and reconsider as untimely because the Petitioner incorrectly mailed his appeal brief to the filing location of the Form I-290B instead of sending it directly to our office, contrary to the instructions of the Form I-290B.[1] We dismissed a second motion as untimely. The matter is now before us on a third 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 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

[1] As we previously informed the Petitioner, he did not submit any brief and/or evidence to us directly and the Form I-290B instructions specifically require that any appeal brief and/or evidence submitted after filing a Form I-290B "must be sent directly to the AAO." *See* USCIS Form I-290B, Instructions for Notice of Appeal or Motion, at 6 (rev. 12/02/19). We further informed the Petitioner that even if the supplemental brief had been properly filed, a careful review of the brief revealed that it generally reiterated the benefits of the Petitioner's profession, his qualifications, and the claimed economic impact of his proposed business, but did not provide any new evidence or arguments capable of overcoming the Director's determination.

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, the Petitioner claims that he timely filed his response to his second motion being dismissed "within the required timeframe and delivered within 33 days to USPS." However, the U.S. Postal Service (USPS) tracking information for the envelope's tracking number reports "Label Created, not yet in system," rather than providing details regarding when USPS delivered the shipment, if not on April 30, 2024, as USCIS records indicate. Accordingly, the Petitioner has not presented any new facts to support a reopening of his case. The Petitioner speculates that various unforeseen weather conditions such as heavy rain, hurricanes and snow could prevent delivery on a scheduled date. However, he does not claim that any meteorological phenomena occurred in his case, nor does he demonstrate that the delay was reasonable and beyond his control. We note that the Petitioner's second motion was received 53 days after we dismissed his first motion. Motions must be filed on a Form I-290B within 30 days of the date of this decision, plus an additional 3 days if the decision is served by mail. *See* 8 C.F.R. § 103.5(a)(1)(i) and 8 C.F.R. § 103.8(a)(3)(b). 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)). Therefore, the Petitioner's motion was untimely, and we will not disturb our prior decision.

Finally, the Petitioner cites the British case *Adams v. Lindsell* (1818), noting that there is a mailbox rule which determines that receipt should be considered at the time the letter is sent and not when it arrives at its destination. He claims that once he delivered the envelope to USPS, he no longer had control over the service, and ". . . [b]y using a Federal Agency like USPS, I understand that the government is already receiving my response at the time of drop-off." However, a Form I-290B is not a contract and, thus, generally is not subject to contract law, as the Petitioner implies on motion to reconsider. Moreover, *Adams v. Lindsell*, a British case, has no precedential value over U.S. law and regulations and, thus, is inapplicable to this matter. Whether some other federal agency has possession of an immigration benefit request is immaterial to determining USCIS' actual date of receipt at the location designated for filing such benefit request. *See id.* Moreover, 8 C.F.R. § 103.2(a)(7)(i) provides that USCIS considers a benefit request received as of the actual date of receipt at the location designated for filing such a request. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations). *See also United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry the force and effect of law). As noted above, the prior motion to reconsider's untimeliness may be excused if the delay was reasonable and beyond the Petitioner's control; however, the record at the time of our prior decision does not establish that the submission delay was either reasonable or beyond the Petitioner's control. *See* 8 C.F.R. § 103.5(a)(1)(i).

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or USCIS policy.

Consequently, we have no basis for a reopening or reconsideration of our decision. Accordingly, the combined motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.