U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34051573

Date: OCT. 1, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a management consultant entrepreneur, seeks employment-based second preference (EB-2) 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 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 she merits a waiver of the job offer and labor certification requirements for EB-2 classification. We dismissed a subsequent appeal as untimely. 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). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

We dismissed the Petitioner's appeal as untimely because the request was filed 40 days after the Director's decision. On motion, the Petitioner contests the correctness of our prior decision and submits a receipt for postage of the appeal filing. The Petitioner argues that her appeal was submitted to the U.S. Postal Service (USPS) in a timely manner and that submission of a benefit request to USPS is the equivalent of submitting the request to the U.S. government.

According to the USCIS policy manual, "USCIS considers a benefit request 'received' on the date it is physically or electronically received." 1 *USCIS Policy Manual* b.6 www.uscis.gov/policy-manual. Regulations require that a benefit be received at the location designated for filing within the allotted

time period. *See* 8 C.F.R. § 103.2(a)(7)(i). USCIS has not designated USPS as a filing location. Therefore, the Petitioner's assertion that she timely submitted her appeal to USPS is unpersuasive. Moreover, while the Petitioner has established that she purchased postage for delivery on a specific date, she has not provided tracking data showing when the submission was mailed or when it was received for processing by USCIS.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. 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, the motions 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.