U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34354159

Date: OCT. 1, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a construction manager and civil engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or, in the alternative, 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 and we dismissed a subsequent appeal. We dismissed a subsequent combined motion to reopen and motion to reconsider because the Petitioner untimely submitted it. The matter is now before us on a second combined motion to reopen and motion to 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 motion.

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).

We incorporate by reference our analysis in the prior combined motion to reopen and motion to reconsider decision. By way of summation, we dismissed the Petitioner's appeal on October 18, 2023, and we served the Petitioner our decision by mail. Service of U.S. Citizenship and Immigration Services' (USCIS) decisions by mail is complete upon mailing. 8 C.F.R. § 103.8(b). On January 23, 2024, USCIS received the Petitioner's Form I-290B, Notice of Appeal or Motion, at the proper filing location, indicating that it was a combined motion to reopen and motion to reconsider our decision on the appeal, dated October 18, 2023. USCIS "record[s] the receipt date as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format." 8 C.F.R. § 103.2(a)(7)(i). We dismissed the combined motion because USCIS received it more than 33 days after we sent the underlying decision on the appeal, citing 8 C.F.R. §§ 103.5(a)(1), 103.8(b).

On motion to reopen, the Petitioner asserts, "If you check the system and review the envelope [l]abel, you will find out that we submitted the previous case within the required deadline." However, the Petitioner does not submit on motion to reopen documentary evidence of the system to which she refers, and any additional information regarding the prior combined motion's delivery date the unidentified system may contain, nor does she specify any particular date within the filing period her prior combined motion may have been delivered. Moreover, the date on which the Petitioner may have submitted the prior combined motion is distinguishable from the date on which USCIS actually received it, which is the filing date, as addressed above. 8 C.F.R. § 103.2(a)(7)(i).

We acknowledge that the label on the envelope in which the Petitioner sent the prior combined motion is dated November 1, 2023, and it states, "Expected Delivery Date 11/03/23." 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 January 23, 2024, as USCIS records indicate. USCIS records are entitled to the presumption of regularity, which "supports the official acts of public officers and, in the absence of clear evidence to the contrary, [presumes] that they have properly discharged their duties." *U.S. v. Chem. Found.*, 272 U.S. 1, 14-15 (1926). Here, there is no clear evidence that USCIS may have improperly discharged its duties when processing the prior combined motion. *See id.*

We acknowledge that the Petitioner asserts on motion to reopen, "Various unforeseen events can occur, such as heavy rains, hurricanes, snow that prevents delivery on the scheduled date, and misplacement by USPS and even USCIS" can interfere with a benefit request filing attempt. However, the Petitioner does not identify any particular unforeseen event that may have occurred between November 1, 2023, when the shipment label is dated, and January 23, 2024, the date on which USCIS received the Form I-290B, to explain the delay or to rebut the presumption of regularity. *See id.* Moreover, we note that, even if the submission delay was reasonable and beyond the Petitioner's control, the prior motion to reconsider's untimeliness may be excused, whereas the prior motion to reopen's untimeliness may not. *See* 8 C.F.R. § 103.5(a)(1)(i).

Because the Petitioner does not submit documentary evidence that may support her assertion that USCIS actually received the prior combined motion on some unspecified date within the filing period, we will dismiss the motion to reopen. 8 C.F.R. §§ 103.5(a)(2), (4).

Next, 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.

On motion to reconsider, the Petitioner contests the correctness of our prior decision, stating, "In contract law, there is the mailbox rule, originating from the British case Adams v. Lindsell (1818), which determined that receipt should be considered at the time the letter is sent and not when it arrives at its destination." The Petitioner further asserts that, because she used "a Federal Agency like USPS, we understand that the government is already receiving our response at the time of dropoff."

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. On the contrary, as noted above, federal regulations provide that an immigration benefit request, including a Form I-290B, is filed upon receipt at the designated filing location, not upon mailing. *See* 8 C.F.R. § 103.2(a)(7)(i). 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.* 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).

Because 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, the motion to reconsider will be dismissed. 8 C.F.R. §§ 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.