U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34326834

Date: OCT. 2, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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 Texas Service Center denied the petition, concluding that the Petitioner had not established that he qualifies as an individual of exceptional ability. The Director further determined that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the Petitioner's appeal and a subsequent motion to reopen. The matter is now before us on a second motion to reopen.

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.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the petitioner must file the motion within 30 days of the decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). Regarding where to file, all benefit requests must be filed in accordance with the form instructions. *See* 8 C.F.R. § 103.2(a)(6). The date of filing is not the date of submission, but the actual date of receipt at the designated filing location. *See* 8 C.F.R. § 103.2(a)(7)(i). Further, 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 dismissed the Petitioner's appeal on August 2, 2023. The record indicates that the Petitioner attempted to file his first motion on September 5, 2023, however, the Form I-290B, Notice of Appeal or Motion, was not accepted because it was not sent to the designated filing location.[1] The Petitioner resubmitted his Form I-290B to the correct filing location on September 25, 2023, or 54 days after our

[1] In correspondence dated September 14, 2023, the Petitioner was informed that his first motion was being returned because it was submitted to the wrong location.

decision was issued. Accordingly, the first motion was untimely filed and therefore it was dismissed on June 4, 2024.[2]

On current motion, the Petitioner requests that we reconsider our latest dismissal and reopen the matter. He contends that his Form I-290B was "received at the designated location on September 5, 2023, as evidenced by the shipping label containing the tracking number, which confirms the timely submission by [the Petitioner]." The Petitioner provides a copy of the U.S. Postal Service shipping label relating to his initial Form I-290B filing attempt on September 5, 2023, but that submission was not accepted because it was sent to the wrong location.[3]

The Petitioner has not demonstrated that our June 4, 2024 decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. In addition, the Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our latest decision. Consequently, we have no basis for reopening or reconsideration of our decision. Accordingly, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

[2] With respect to an untimely motion to reopen, failure to file during the required period "may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." *See* 8 C.F.R. § 103.5(a)(1)(i). Here, the Petitioner has not demonstrated that the delay in filing was reasonable and beyond his control.

[3] The shipping label is not addressed to the correct designated filing location as indicated in the instructions accompanying the Form I-290B. All benefit requests must be filed in accordance with the form instructions. *See* 8 C.F.R. § 103.2(a)(6).