U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39329489

Date: OCT. 10, 2025

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, 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).

Service Center Operations denied the petition, concluding the Petitioner did not establish that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. We dismissed a subsequent appeal and eight combined motions to reopen and reconsider. The matter is now before us on a ninth 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 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 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)(l)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

Motions to reopen or reconsider must be filed within 30 days of the decision, or 33 days if the decision is served by mail. 8 C.F.R. § 103.5(a)(l)(i), 103.8(b). U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, excuse the untimely filing of a motion to reopen where the record demonstrates that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(l)(i). There is no comparable authority to excuse an untimely filed motion to reconsider. *See id.*

On February 6, 2025, we mailed the prior combined motion decision to you. Upon dismissal of the prior motion, the Petitioner had 33 days to file a motion. *See* 8 C.F.R. § 103.5(a)(1)(i). A timely motion had to be filed no later than March 11, 2025. USCIS did not receive this motion until May 29, 2025. Accordingly, the Petitioner did not timely file the motion, as it was received 112 days after our decision was issued.

For the motion to reopen, the Petitioner has the burden to establish that the late filing was reasonable and beyond his control and should therefore be excused. *See* 8 C.F.R. § 103.5(a)(l)(i). The Petitioner requests we excuse the untimely filing of his motion, asserting that he received the prior decision dated February 6, 2025, by mail on May 17, 2025. In his statement, the Petitioner indicates, "I have been visiting and checking my mailbox regularly twice a week to check if I have mail or letter. For unknown reasons, I received the decision copy only on May 17, 2025."

The Petitioner has not established that we did not properly issue the prior decision. Routine service consists of mailing the notice by ordinary mail addressed to the affected party and his or her attorney or representative of record at his or her last known address. 8 C.F.R. § 103.8(a)(1)(i). USCIS records indicate that on February 6, 2025, we sent the decision by regular mail to the mailing address provided by the Petitioner in his Form I-290B. Therefore, the record before us indicates that we properly issued the dismissal notice to the Petitioner. Without further evidence, the Petitioner has not shown that his delay in filing this motion to reopen was reasonable and beyond his control, such that his untimely filing should be excused in USCIS' discretion under 8 C.F.R. § 103.5(a)(l)(i).

As noted above, we have no authority to excuse the late filing of his motion to reconsider. 8 C.F.R. § 103.5(a)(l)(i).

Accordingly, we will dismiss the motion to reopen and reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.