U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39915793

Date: OCT. 16, 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 that the Petitioner did not establish that the proposed endeavor has national importance, as required in part by the precedent decision, *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). We dismissed the Petitioner's appeal of that decision. We then dismissed a subsequent motion to reopen for several issues. We then dismissed a combined motion to reopen and motion to reconsider as untimely. The matter is now before us on a third motion, again a 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.

We incorporate by reference our analysis in our prior decisions. By way of summation and in relevant part, we dismissed the Petitioner's appeal because the record does not establish that her proposed endeavor of operating a grocery store that provides prepared meals has national importance, as required by the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. We then dismissed the Petitioner's initial motion to reopen, noting its untimeliness and explaining why the Petitioner's claim of ineffective assistance of counsel does not satisfy the requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). We further determined that, even if the Petitioner had timely submitted her motion to reopen, the documentary evidence submitted with it nevertheless would not establish that the proposed endeavor has national importance. We then dismissed the Petitioner's subsequent combined motion to reopen and motion to reconsider because the designated U.S. Citizenship and Immigration Services (USCIS) filing location received it on May 5, 2025, more than 33 days after we dismissed her motion to reopen on February 13, 2025.

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 review only the

latest decision in these proceedings. 8 C.F.R. §§ 103.5(a)(1)(i)-(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).

On motion, the Petitioner submits a brief and two items of documentary evidence, both of which are one-page photocopies of receipts for FedEx shipments to a USCIS filing location, with scheduled delivery dates of March 18, 2025, and May 5, 2025, respectively. The Petitioner asserts that she sought the assistance of a second attorney; however, she considers her second attorney's assistance, similar to that of her first attorney, to be both ineffective and at fault for the deficiencies of the shipment scheduled for delivery in March. USCIS rejected the Form I-290B, Notice of Appeal or Motion, that the Petitioner submitted in March because the Form I-290B did not contain a completed Part 2. Information About the Appeal or Motion section. *See* 8 C.F.R. § 103.2(a)(1) (requiring every submitted form and benefit request to be executed in accordance with the respective form instructions); *see also* 8 C.F.R. § 103.2(a)(7)(ii) (enumerating reasons for which USCIS will reject a benefit request, including improper execution).

We explained in our decision dismissing the Petitioner's initial motion to reopen that her ineffective assistance of counsel claim did not satisfy the *Lozada* requirements. *See Matter of Lozada*, 19 I&N Dec. at 639. Similarly, despite asserting in the instant combined motion that her former attorneys' assistance has been ineffective, the Petitioner's combined motion to reopen and motion to reconsider before us does not satisfy the *Lozada* requirements. *See id.* More specifically, the Petitioner does not submit evidence that she informed the respective counsel of her allegations of ineffective assistance and that she gave them an opportunity to respond, including their response, if any; and she does not submit evidence that she filed a complaint with the appropriate disciplinary authorities, or an explanation for why she has not done so. *See id.* Because the Petitioner's present combined motion does not satisfy the threshold requirements of a *Lozada* claim, we need not address that claim further.

Turning to the documentary evidence the Petitioner submits in support of her current motion to reopen, the receipts establish that an unspecified purchaser paid FedEx to deliver shipments on the dates noted above. However, whether an individual—regardless of whom that individual is, which the receipts do not establish—paid FedEx to deliver shipments, or whether FedEx scheduled to deliver those shipments on any particular date are not facts at issue.

The regulations provide that USCIS may, as a matter of discretion, excuse the untimeliness of a motion to reopen if the delay was both reasonable and beyond the Petitioner's control; however, the regulations do not provide USCIS such discretion to excuse a motion to reconsider's untimeliness. 8 C.F.R. § 103.5(a)(1)(i). The regulations further provide that USCIS considers a benefit request received "as of the actual date of receipt at the location designated for filing such benefit request" and that rejected benefits returned to petitioners "will not retain a filing date." 8 C.F.R. §§ 103.2(a)(7)(i)-(ii).

Here, the FedEx receipts do not indicate how the Petitioner's delay in submitting a complete and correct combined motion to reopen to the proper filing location was both reasonable and beyond the Petitioner's control, and any such grounds would not apply to our decision to dismiss the Petitioner's prior motion to reconsider as untimely. *See* 8 C.F.R. §§ 103.2(a)(7)(i)-(ii), 103.5(a)(1)(i). Because the documentary evidence the Petitioner submits in support of her current motion to reopen does not

establish a fact material to our basis for having dismissed the preceding, untimely combined motion, it does not satisfy the requirements of a motion to reopen; therefore, we will dismiss the motion to reopen. *See* 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).

The Petitioner generally asserts on motion to reconsider that our decision dismissing her preceding combined motion "is incorrectly issued." However, the Petitioner does not identify a law or policy that we may have misapplied. Because the Petitioner's motion to reconsider does not establish that our prior decision was based on an incorrect application of law or policy, it does not satisfy the requirements of a motion to reconsider; therefore, we will dismiss the motion to reconsider. *See* 8 C.F.R. §§ 103.5(a)(3)-(4).

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.