U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33967035

Date: OCT. 25, 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 either a member of the professions holding an advanced degree or 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 Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner is eligible for the underlying EB-2 visa classification and, therefore, is not eligible for, and does not merit, a national interest waiver as a matter of discretion. We dismissed a subsequent appeal. Thereafter, the Petitioner filed a motion to reopen, which was dismissed as untimely. 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.

Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). The most recent decision was issued on August 2, 2023. The Form I-290B, Notice of Appeal or Motion, in this matter was not received until April 19, 2024, over eight months after the decision. Pursuant to 8 C.F.R. §§ 103.5(a)(1)(i) and 103.8(b), motions must generally be filed within 33 days of the adverse decision.

The untimely filing of a motion to reopen may be excused in the discretion of U.S. Citizenship and Immigration Services where it is demonstrated that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i). Here, although the Petitioner addresses the previously dismissed untimely motion to reopen, he has not demonstrated, or even addressed, that the untimely filing of the motion before us was reasonable and beyond his control.[1] 8 C.F.R. § 103.5(a)(1)(i).

[1] While we acknowledge the submission of Form I-797C, Notice of Action, dated March 13, 2024, which indicates that the motion was received on February 20, 2024, it also states that it was returned to the Petitioner. But even if it had not been returned, it still was not filed within 33 days of the August 2, 2023, decision. 8 C.F.R. §§ 103.5(a)(1)(i) and 103.8(b).

Because the motion to reopen before us was not timely filed and the Petitioner has not provided information or evidence to explain that the delay was reasonable and beyond his control, the motion to reopen is dismissed.

ORDER: The motion to reopen is dismissed.