U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39208065

Date: SEP. 11, 2025

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Professional)

The Petitioner, an importer, sought to employ the Beneficiary as its business manager. The company requested his classification under the employment-based third preference (EB-3) immigrant visa category as a "professional." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). Employers may sponsor aliens for U.S. permanent residence in this classification to work in jobs that require at least a bachelor's degree. *Id*.

Service Center Operations (SCOPS) revoked the approval of the petition, concluding that the record did not establish that the Beneficiary has the two years of work experience required for the offered job. We dismissed the Beneficiary's subsequent appeal, concluding that he did not overcome the grounds for revocation.[1] *See In Re: 25609696* (AAO Oct. 12, 2023). We also dismissed the Beneficiary's four subsequent motions. The matter now returns to us on combined motions to reopen and reconsider.

As a movant in revocation proceedings, the Beneficiary bears the burden to demonstrate eligibility by a preponderance of the evidence. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). Upon review, we will dismiss the motions.

I. LAW

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). 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).

[1] SCOPS determined that the Beneficiary qualifies for treatment as an "affected party" in these revocation proceedings because he established eligibility to "port" to a new job under section 204(j) of the Act, 8 U.S.C. § 1154(j), and properly requested permission to port. *See Matter of V-S-G- Inc.*, Adopted Decision 2017-06, at *14 (AAO Nov. 11, 2017).

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).

II. ANALYSIS

In our latest decision, issued on April 23, 2025, we dismissed the Beneficiary's fourth motion, in which he sought the reopening or reconsideration of our decision dated January 10, 2025. In that decision, we dismissed his third combined motion to reopen and reconsider as untimely filed because it was not filed within 33 days of the mailing of our prior decision. *See* 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b)(1).

We considered whether the record demonstrated that the delay in filing the third motion "was reasonable and was beyond the control of the applicant or petitioner."[2] 8 C.F.R. § 103.5(a)(1)(i). However, we concluded that the record did not demonstrate that circumstances beyond the Beneficiary's control caused the delay in filing, noting that the record showed that the primary cause of the late filing appeared to be errors in the completion of the Form I-290B, Notice of Appeal or Motion, which led SCOPS to reject the Beneficiary's first two attempts to file the motion.

In addition, we acknowledged counsel's claim that she or an employee of her firm had inadvertently made an error on the Form I-290B which led to its rejection. However, we emphasized that parties are generally bound by their attorney's conduct during representation. *Guzman-Rivadeneira v. Lynch*, 822 F.3d 978, 981 (7th Cir. 2016) (discussing "the general rule that aliens are bound by the representations of their lawyers"); *Matter of Gawaran*, 20 I&N Dec. 938, 942 (BIA 1995) (citation omitted) (finding that, absent egregious circumstances, an attorney's conduct in their professional capacity binds their client). Finally, we addressed the Beneficiary's assertion that SCOPS did not clearly identify its reasons for rejecting the third motion but determined that the rejection notices adequately advised of a problem in Part 2 of the Form I-290B. The record did not include evidence, such as a copy of the Form I-290B that counsel originally submitted, showing that USCIS rejected the form in error. Therefore, we concluded that the Beneficiary did not establish the delay in filing the third motion was beyond his control.

In a brief submitted in support of the current motion, the Beneficiary reargues issues we considered in our immediate prior decision. A motion is not an opportunity to restate previously considered and rejected arguments, just as it is not an opportunity to reargue facts and issues already addressed on appeal. *See, e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision").

As he did in his prior motion, the Beneficiary claims that we erred in applying a rigid 33-day deadline without considering his reasonable efforts to file the third motion on time, or external factors that prevented him from doing so, such as "a minor clerical error on the form" and "USCIS's failure to clearly communicate the reasons for its rejections." We already addressed the Beneficiary's claims

[2] We acknowledged that we had erred by not considering his request to excuse the untimely motion to reopen in our decision dated January 10, 2025. However, as observed in our April 2025 decision, that error was harmless because the Beneficiary did not establish that the delay in the motion's filing was beyond his control.

that USCIS did not adequately explain its reasons for rejecting his motion and his claim that any clerical errors that led to such rejections were made by counsel and therefore not the result of his own negligence. With the current motion, the Beneficiary does not contest our specific reasons for finding these arguments unpersuasive or challenge the legal authorities cited in our decision. He therefore has not established with the current motion that our last decision was based on an incorrection application of law or policy. Accordingly, the motion to reconsider will be dismissed.

Turning to the motion to reopen, a new statement from the Beneficiary describes a deterioration in his physical health that was recently diagnosed as degenerative disc disease in his lumbar spine. He notes that pain and physical limitations have affected his mobility, ability to work and quality of life. Counsel asserts in her brief that the Beneficiary's condition was previously unknown to USCIS and is "not only new but materially affect(s) the hardship analysis that lies at the heart of this case."

While the Beneficiary's statement is supported by documentation of his medical condition, he has not stated how the new evidence pertains to our latest decision dismissing his fourth motion or demonstrates that we erred by dismissing that motion. *See Matter of Coelho*, 20 I&N Dec. at 473 (requiring that new evidence has the potential to change the outcome of a decision). Further, counsel has not supported her claim that the adjudication of a motion on an underlying employment-based immigrant visa petition requires a hardship analysis. We are sympathetic of the Beneficiary's medical diagnosis, but he has not shown, for example, that his physical limitations caused a delay in the filing of his prior motion.

The Beneficiary's statement also includes general references to "the failure of attorneys" he trusted to properly handle his case. To the extent the Beneficiary makes an ineffective assistance of counsel claim, we note that he has not complied with the requirements described in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), or established that his former attorney's assistance was so deficient he was prejudiced by the performance. *See Matter of Melgar*, 28 I&N Dec. 169, 171 (BIA 2020).

The Beneficiary suggests that he was prejudiced because the late filing of his first motion resulted in USCIS never considering the merits of new evidence that addressed the grounds for denial of his immigrant petition. However, the record does not support his claim that he was prejudiced by former counsel's performance.

We had dismissed the Beneficiary's appeal due to material inconsistencies in the record concerning the Beneficiary's claimed prior employment with [redacted], noting that, considering such inconsistencies, we could not accept an employment letter from this company alone as evidence that he had satisfied the experience requirement for the job offered. In his initial motion, which we properly dismissed as untimely filed, the Beneficiary asserted that the income reflected in the Indian tax return "is from my employment with [redacted] and my ownership stake I had at the time in my family's business, [redacted]." The Indian tax return he offered in support of his first motion indicates that he earned "business income" in India during the period covered (1999-2000) including salary income, but it does not identify [redacted] or "[redacted]" (the company's fictitious name) as the source of that income. The only company name stated in the tax return is [redacted], and the Beneficiary did not claim that he obtained the required work experience with this company. Had we not been required by 8 C.F.R. § 103.5(a)(1)(i) to dismiss the Beneficiary's initial motion as untimely, we would have dismissed it on its merits for failing to establish his eligibility for

the benefit sought. Therefore, he has not shown that former counsel's late filing of the initial motion prejudiced his case.

Because the Beneficiary has not established new facts that would warrant reopening of the proceeding, the motion to reopen will be dismissed.

The Beneficiary has also requested that USCIS accept his motion nunc pro tunc, deem it timely and reopen and reconsider his case on its merits "in light of both the procedural injustice and the newly available medical evidence." Essentially, the Beneficiary requests that we treat his initial motion, filed in November 2023, as timely filed, to determine whether the evidence and arguments he presented therein overcome our reasons for dismissing his appeal and establish his eligibility for the immigrant visa classification sought.

The Beneficiary cites case law such as *Mathews v. Eldridge*, 424 U.S. 319 (1976), in support of his claim that he has been denied due process as he has not had a meaningful opportunity to present his case. We note that *Mathews* considers the constitutional validity of the Secretary of Health, Education, and Welfare's administrative procedures in determining the existence of continuing disabilities, which implicates property rights. Conversely, there are no due process rights implicated in the adjudication of an immigrant petition. *See Lyng v. Payne*, 476 U.S. 926, 942 (1986) (holding that "[w]e have never held that applicants for benefits ... have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."); *see also Azizi v. Thornburgh*, 908 F.2d 1130, 1134 (2d Cir. 1990) (explaining that the Fifth Amendment protects against the deprivation of property rights granted to immigrants without due process; however, petitioners do not have an inherent property right in an immigrant visa). Therefore, the Beneficiary's claim that due process concerns compel us to grant nunc pro tunc relief are not persuasive. Further, the record does not support the Beneficiary's allegations of "procedural injustice" in our adjudication of his four prior motions to reopen or reconsider. Accordingly, his request for nunc pro tun relief will not be granted.

III. CONCLUSION

Although the Beneficiary has submitted additional evidence in support of the motion to reopen, he has not established eligibility. On motion to reconsider, the Beneficiary has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(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.