U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39207256

Date: SEPT. 15, 2025

Motions on Administrative Appeals Office Decision

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

The Petitioner, a finance manager, requests classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and related requirements for certifications from the U.S. Department of Labor – if petitioners demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.; see also Poursina v. USCIS*, 936 F.3d 868, 869-70 (9th Cir. 2019).

Service Center Operations (SCOPS) denied the petition, and we dismissed the Petitioner's following appeal. We agreed with SCOPS that she did not demonstrate the "national importance" of her proposed U.S. work as a finance manager. *See Matter of Dhanasar*, 26 I&N Dec. 884, 889-90 (AAO 2016) (requiring petitioners for national interest waivers to establish that their proposed work has national importance). We then dismissed her following eight combined motions to reopen and reconsider. In her most recent set of motions, we concluded that she neither presented relevant new facts nor demonstrated our misapplication of law or policy regarding the claimed national importance of her proposed financial management work. *See In Re: 37690783* (AAO Apr. 9, 2025).

The matter returns to us on the Petitioner's combined motions to reopen and reconsider. She bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that her current motion to reconsider is untimely and that, even if we excused the motion to reopen's late filing, it would not demonstrate her eligibility for the requested benefit. We will therefore dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish that our prior decision misapplied law or policy based on the evidence at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, our scope of review is limited to our prior decision. *See* 8 C.F.R. § 103.5(a)(1)(i), (ii) (referring to "the prior decision" and "the latest decision in the proceeding").

Petitioners must file motions within 33 days of the issuances of the challenged decisions by regular mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). We may excuse late-filed motions to reopen if petitioners demonstrate that the delays were "reasonable" and "beyond the [petitioners'] control." 8 C.F.R. § 103.5(a)(1)(i). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefits.

II. ANALYSIS

The Petitioner filed the current motions on May 27, 2025. They arrived 48 days after we sent our most recent decision by regular mail to her address of record on April 9, 2025. The Petitioner's motions are therefore untimely. *See* 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b).

The regulations do not allow us to excuse a late-filed motion to reconsider. *See* 8 C.F.R. § 103.5(a)(1)(i). Thus, we must dismiss the Petitioner's motion to reconsider as untimely. *See* 8 C.F.R. § 103.5(a)(4) ("A motion that does not meet applicable requirements shall be dismissed.")

As previously indicated, however, we may excuse a late-filed motion to reopen if a petitioner demonstrates that the delay "was reasonable and was beyond the[ir] control." 8 C.F.R. § 103.5(a)(1)(i). On motion, the Petitioner contends that the "delay [in filing her motion to reopen] was unavoidable and not within [her] control." She states: "I only received AAO's decision dated April 9, 2025 [on] May 22, 2025, when I opened my mailbox. I often check my mailbox every day." Also, she cites a precedent Board of Immigration Appeals (BIA) case, arguing that we should "equitably toll" the motion deadline because she "diligently" submitted the motions and an "extraordinary circumstance" prevented their timely filing. *See Matter of Morales-Morales*, 28 I&N Dec. 714, 717 (BIA 2023) (under similar conditions, allowing for equitable tolling of an appellate deadline).

Absent clear evidence to the contrary, however, "a presumption of regularity attaches to the actions of Government agencies." *Kousisis v. United States*, 145 S. Ct. 1382, 1404 (2025) (quoting *Postal Service v. Gregory*, 534 U.S. 1, 10 (2001). Thus, we are legally presumed to have timely mailed our last decision to the Petitioner.

In any event, we need not decide whether *Morales-Morales* applies to this matter. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions). Even if we excused the untimely filing of the Petitioner's motion to reopen or equitably tolled its deadline, it would not demonstrate her eligibility for the requested benefit. The motion contains evidence addressing only the timeliness of its filing. It lacks evidence of the claimed national importance of her proposed U.S. financial management work, the underlying dismissal ground of our prior decision. Thus, the motion to reopen would not demonstrate the Petitioner's eligibility for the requested benefit.

III. CONCLUSION

The Petitioner's motion to reconsider is untimely. Even if we excused the late filing of her motion to reopen, it would not demonstrate her eligibility for the requested benefit.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are unlawfully present, or who are otherwise inadmissible or deportable, may receive Forms I-862, Notices to Appear, placing them in removal proceedings. *See* section 240 of the Act, 8 U.S.C. § 1229a. Removal proceedings may result in an alien's removal from the United States and ineligibility for future U.S. visas or other immigration benefits.