U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39144729

Date: SEP. 15, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an Oracle EBS consultant, 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* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner had not established his eligibility for the underlying EB-2 classification or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner subsequently filed an appeal and three motions to reconsider, which we dismissed. The matter is now before us as a fourth 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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the motion.

A motion to reconsider must be filed within 33 calendar days of the decision that the motion seeks to be reconsidered. *See* 8 C.F.R. §§ 103.5(a)(1)(i) (providing a motion on an unfavorable decision must be filed within 30 calendar days of the date of the decision), 103.8(b) (providing 3 days shall be added to the prescribed period when notice is served by mail). There is no provision for us to excuse an untimely filing of a motion to reconsider. 8 C.F.R. §§ 103.5(a)(1)(i). Therefore, an untimely motion to reconsider must be dismissed.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(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).

In our prior decision, we explained that the Petitioner's motion to reconsider was filed 52 calendar days after our last decision and was therefore untimely filed. We acknowledged the Petitioner's statement that, but for his motion being rejected for the incorrect fee amount, it would have been timely filed. However, as we noted, there was no provision for us to excuse an untimely filing of a motion to reconsider. Moreover, each form, benefit request, or other document requiring a fee payment by regulation must be filed with the correct fee(s). 8 C.F.R. § 103.2(a)(1), (a)(7)(D); *see generally* 1 *USCIS Policy Manual* B.3, https://www.uscis.gov/policy-manual (providing, as guidance, requestors must include the required fee amount, which is controlled by regulation, with the submission of a benefit request to USCIS). Consequently, we dismissed the motion.

In this current motion, the Petitioner asserts that he is eligible for EB-2 benefits and therefore we should positively exercise discretion in his favor. The Petitioner additionally argues that he should otherwise prevail on his late motion, and among other sources, cites *Baldwin County Welcome Ctr. v. Brown,* 466 U.S. 147 (1984) as support. However, the Petitioner's reliance on *Baldwin County Welcome Ctr.* is misplaced. In a per curiam decision, the Court declined to excuse Brown's late filing by tolling the 90-day period to do so. Specifically, the Court found that Brown had received adequate notice of the deadline to file, there were no present equitable circumstances present such as a pending motion for the appointment of Brown's counsel, the court had not led Brown to believe that she had done everything required of her, nor had Brown been lulled into inaction as a result of affirmative misconduct on the part of the opposing party. Nor was the Court persuaded by Brown's argument that Baldwin County Welcome Ctr. was not prejudiced by her failure to comply with the procedural rules. As the Court stated, "[t]he simple fact is Brown was told three times what she must do to preserve her claim, and she did not do it. One who fails to act diligently cannot invoke equitable principles to excuse that lack of diligence." *Id.* Here, the Petitioner asserts that he has exercised due diligence, and his late filing was not due to fault or neglect. However, the Petitioner has not shown that our decision was based on an incorrect application of law or policy. Therefore, the petition will remain denied.

The Petitioner did not check the boxes on page 2 of the Form I-290B at Parts 2.a and 2.c to indicate that he was also filing a motion to reopen. However, he argues that he is also filing a motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion as untimely. While we acknowledge the hardship this may cause, filing deadlines are essential to the function of the immigration system so that the agency and the affected party may bring cases to a final conclusion. *See Matter of Morales-Morales*, 28 I&N Dec. 714, 716 (BIA 2023). "Filing deadlines . . . necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced." *Id.* (quoting *United States v. Locke*, 471 U.S. 84, 101 (1985)). Because the Petitioner has not established new facts that would warrant reopening of the proceedings, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). 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.