U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39232172

Date: SEP. 19, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an industrial and quality engineer, seeks employment-based second preference (EB-2) 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 EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish 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. We dismissed a subsequent appeal and three motions to reconsider. The last motion to reconsider was dismissed due to untimely filing. The matter is now before us on 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.

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 only review 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). The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Accordingly, our review on motion is limited to reviewing our April 2024 dismissal of the motion to reconsider as untimely.

A motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider or 33 days if the decision is served by mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). While we may excuse an untimely motion to reopen in our discretion where it is demonstrated that the delay was reasonable and beyond the control of the Petitioner, the regulations do not provide similar discretion to excuse an untimely motion to reconsider. *Id*. The filing date is the date USCIS properly receives a

filing in accordance with filing instructions. *See generally* 1 *USCIS Policy Manual* B.6(C), https://www.uscis.gov/policy-manual.

On motion to reopen, the Petitioner acknowledges he untimely filed his most recent motion to reconsider, as it was received on March 11, 2025, "a day after the expiration of the 33-day deadline following the initial decision." However, the Petitioner submits a statement asserting that the delay in filing the motion to reconsider was entirely due to United States Postal Service (USPS) delays. The Petitioner asserts he mailed his motion on March 7, 2025, via overnight delivery, and that the tracking label reflected a scheduled delivery date of March 10, 2025. However, USCPS did not deliver the Petitioner's motion until March 11, 2025. The Petitioner asserts that USPS tracking records demonstrate his motion "was transferred between USPS locations multiple times before final delivery" and it "remained in USPS custody from March 7 through March 11, with no action on the part of the Petitioner that contributed to the delay." In support of his assertions, the Petitioner submits tracking information for his motion indicating March 10, 2025, as the scheduled delivery date and March 11, 2025, as the actual delivery date. The Petitioner claims the delay in filing was reasonable, as his motion was sent in advance using overnight mail, and the delay was outside the Petitioner's control as he could not have foreseen or prevented USPS' issues.

We acknowledge the Petitioner's assertions but, as stated, we do not have discretion to accept a late filed motion to reconsider. Therefore, the Petitioner's claim that the delay in filing his prior motion to reconsider was reasonable and beyond his control is not persuasive. The Petitioner has not established that our previous decision dismissing his motion to reconsider due to untimely filing was incorrect as a matter of law or policy.

As the Petitioner has not established that the new facts and evidence she submits on instant motion to reopen overcomes our previous determination, the motion must be dismissed. 8 C.F.R. §§ 103.5(a)(2), (3).

ORDER: The motion to reopen 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.