U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34043572

Date: SEP. 24, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish eligibility for a waiver of the job offer requirement in the national interest. We dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and 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). 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). 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(l)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

Motions to reopen or reconsider must be filed within 30 days of the decision, or 33 days if the decision is served by mail. 8 C.F.R. § 103.5(a)(l)(i), 103.8(b). The date of filing is the date U.S. Citizenship and Immigration Services (USCIS) receives the intended motion: (1) completed, signed, and accompanied by the required fee as specified by the Form I-290B, Notice of Appeal or Motion, instructions; and (2) at the location that those instructions designate for filing motions. See 8 C.F.R. §§ 103.2(a)(l) and 103.2(a)(6). USCIS may, in its discretion, excuse the untimely filing of a motion to reopen where the record demonstrates that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(l)(i). There is no comparable authority to excuse an untimely filed motion to reconsider. See id.

We dismissed the Petitioner's appeal on April 29, 2024. In that decision, we discussed the merits of the petition. Upon dismissal of the appeal, the Petitioner had 33 days to file a motion. See 8 C.F.R. § 103.5(a)(1)(i). Because the 33rd day fell on a weekend, the Petitioner had until the next business day to file a motion. See 8 C.F.R. § 1.1. As a result, a timely motion had to be filed no later than June 3, 2024. USCIS did not receive the completed and signed Form I-290B with the required fee at the designated USCIS location until June 4, 2024. Accordingly, the Petitioner did not timely file this motion, as it was received on June 4, 2024, 36 days after our decision was issued.

As noted, the late filing of the Petitioner's motion to reconsider may not be excused. 8 C.F.R. § 103.5(a)(l)(i).

With respect to his motion to reopen, the Petitioner has the burden to establish that the late filing was reasonable and beyond his control and should therefore be excused. On motion, the Petitioner argues, through counsel, that we should excuse the late filing and not penalize the Petitioner "for the delay of less than one day (this package will be delivered in the morning following the failed attempted delivery) for a delay that was beyond his control, and which is reasonable under the circumstances." With the motion, the Petitioner submits evidence relating to the late filing and a brief with additional documentation relating to his motion contesting our dismissal of the appeal on the merits.

The instructions to Form I-290B, Notice of Appeal or Motion, state on page 6:

> Where To File?
>
> Please use our website at www.uscis.gov/i-290b for the most current information about where to file this appeal or motion.

The filing address chart mentioned above indicates that, to file a motion on an AAO decision, filers should send the Form I-290B to "[t]he USCIS office that made the original unfavorable decision on your case. Use the information in sections above to determine which address to send your Form I-290B to." The chart includes an illustrative example:

> Example: The USCIS Miami Field Office denied your Form I-601. You filed an appeal with the AAO, but AAO dismisses the appeal. You want to file a motion asking that AAO reconsider its dismissal. You should file your motion with the Chicago Lockbox because the Miami Field Office issued the original denial on your case.

In this case, the Texas Service Center issued the original unfavorable decision by denying the petition. The chart identified above specifies that filings disputing Service Center decisions should be sent to the "USCIS Phoenix Lockbox."

The Petitioner claims he initially attempted to file the motion with the USCIS Dallas Lockbox on June 3, 2024. However, the courier, On Time Couriers, could not deliver the motion because "the Dallas Lockbox does not accept courier deliveries from bonded couriers other than FedEx, UPS or DHL." (emphasis omitted). Because the initial courier could not deliver the package, the Petitioner explains that he sent a second package with the motion to the USCIS Dallas Lockbox via FedEx courier on June 3 to be delivered on June 4, 2024. With the motion, the Petitioner submits an email

correspondence from On Time Couriers indicating a pickup at FedEx in Lewisville, TX and a drop off at USCIS, 2501 S State Hwy 121 400N, Lewisville, TX 75067. The email states the "Status" of the order as "Delivered" and the "Received By" as "attempted, 15 minutes [o]n 6/3/2024 . . . ." The Petitioner also submits USCIS instructions for direct filing addresses for the Form I-140 with Form I-485.

The Petitioner's cover letter and envelope for this motion are consistent with the Petitioner mailing the motion to the USCIS Dallas Lockbox, instead of the USCIS Phoenix Lockbox, which is the designated filing location for decisions originating from the Texas Service Center. Government records indicate the USCIS Phoenix Lockbox received this motion on June 4, 2024, after the filing deadline.

Every form, benefit request, or other document must be submitted and executed in accordance with the form instructions. 8 C.F.R. § 103.2(a)(1). Here, the Form I-290B instructs petitioners to send motions disputing a Service Center decision to the USCIS Phoenix Lockbox. Instead, the Petitioner sent the motion to the USCIS Dallas Lockbox, and the correct designated filing location, the USCIS Phoenix Lockbox, did not receive the motion until after the filing deadline. The Petitioner claims a misunderstanding of acceptable courier services caused the delay of timely filing; however, the evidence shows the Petitioner did not send the motion to the filing address designated in accordance with the form instructions.

Accordingly, the Petitioner has not shown that his delay in filing his motion to reopen was reasonable and beyond his control, such that his untimely filing should be excused in USCIS' discretion under 8 C.F.R. § 103.5(a)(l)(i). Moreover, we have no authority to excuse the late filing of his motion to reconsider. Accordingly, we will dismiss the motion to reopen and reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.