U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34050903

Date: SEPT. 26, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks second preference immigrant classification and 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).

The Director of the Texas Service Center denied this petition on October 27, 2022, and the Petitioner filed an appeal [redacted] of this decision which was denied on May 4, 2023. The Petitioner then filed her first combined motion to reopen and reconsider on July 21, 2023 [redacted] which was rejected on November 2, 2023, for being filed late. The Petitioner filed a second motion to reopen and reconsider [redacted], which was received on December 14, 2023, and was also rejected as late. The decision on her second motion was issued on May 6, 2024. The matter is now before us on a timely filed third 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 both motions.

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)(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).

On motion the Petitioner does not submit new evidence and asks for her previous decision to be reconsidered stating that if we look to the envelops and mailing records, we will see that her second motion was timely filed.

After review of the record, we find that the evidence presented by the Petitioner is inconclusive as to a receipt date and when weighed against our records and notices, a preponderance of the evidence indicates it is more likely than not that the motion was filed late. For instance, the Petitioner presents

two shipping receipts with confirmed delivery dates, but the dates do not involve the dates in question and there is no evidence attaching them to the second motion. The record also includes an envelope presumably indicating the second motion was expected to be delivered on November 15, 2023. However, when searching the U.S. Postal Service tracking system with the bar code number presented on the envelope it indicates that a shipping label was created with this tracking number but never shipped. Furthermore, there is no evidence definitively linking this envelope to the filing of the second motion. Notably, the Petitioner has not submitted a delivery confirmation for this filing and the receipt notice for the second motion confirms the late filing date of December 14, 2023. Moreover, even if this motion was reopened, we would then turn to the Petitioner's first filed motion, which was also rejected as late, which we can confirm was accurate.[1]

Because the Petitioner has not presented new facts, her motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4). Similarly, because the Petitioner has not established that our prior decision to dismiss the prior motion was incorrect based on the evidence in the record of proceedings at the time of the decision we will dismiss the motion to reconsider. *Id.*

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] Our records show the Petitioner's first motion was received late and, like the evidence submitted with this motion, there appears to be concerns with the credibility of the delivery envelop presented as evidence of receipt. For instance, the envelope purporting to show the expected delivery date for this first motion shows a date of May 17, 2023, but the Form I-290B is dated June 1, 2023. In addition, our records confirm that the Petitioners first motion was received on July 21, 2023, or 79 days after the appeal decision was issued. The late rejection of the first motion was appropriate.