



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33855028

Date: SEPT. 11, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a general and operations manager, 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* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish his eligibility for EB-2 classification or for the requested national interest waiver. We summarily dismissed the Petitioner's appeal. The Petitioner subsequently filed combined motions to reopen and reconsider, which we dismissed as untimely filed. The matter is now before us again on combined motions 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 motions.

I. MOTION TO REOPEN

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).

We dismissed the Petitioner's first motion based on a determination that it was untimely filed. We mailed our decision summarily dismissing the Petitioner's appeal on October 20, 2023. A motion on an unfavorable decision must be filed within 33 days of the date U.S. Citizenship and Immigration Services (USCIS) mailed the decision. 8 C.F.R. § 103.5(a)(1), 103.8(b). Therefore, any motion requesting reopening and/or reconsideration of our decision was due on or before November 22, 2023. The USCIS designated filing location received the Petitioner's prior motion on December 11, 2023, 52 days after the date of our decision.

In a statement submitted with the instant motion to reopen, the Petitioner asserts that “[he] submitted the previous case within the required deadline” and that it was “delivered within 33 days at USPS.” The Petitioner provides copies of U.S. Postal Service (USPS) Click-N-Ship Label Records printed on June 5 and 22, 2023, as well as other documents pertaining to his appeal and prior motions.

The Petitioner does not claim that USCIS timely received his prior motions on or before November 22, 2023. Rather, he asserts that reopening is warranted because he *mailed* his motions within the required timeframe and, according to the “mailbox rule,” this is sufficient to establish timely filing. The Petitioner’s reliance on this argument is misplaced. The common law “mailbox rule” does not apply in USCIS proceedings, which are instead governed by the regulation at 8 C.F.R. § 103.2(a)(7)(i) stating that a petition or application is considered to have been filed on the date of actual receipt by USCIS, not the date it was mailed. As noted previously, to properly file the motion, the Petitioner needed to ensure that it was *received* at the USCIS designated filing location within 33 days of our October 20, 2023, decision, or no later than November 22, 2023. The Petitioner’s argument that he timely mailed the motions, even if established, is, therefore, irrelevant. He has provided no evidence to show that they were, in fact, received by USCIS within the required period and, thus, timely filed.

Finally, the regulation at 8 C.F.R. § 103.5(a)(1)(i) states that the untimely filing of a motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. Here, the Petitioner did not provide an explanation for the untimely filing other than to assert that he no longer had control over the motions’ final delivery once he delivered the package to USPS. However, he has not provided evidence that he mailed the motions within the required timeframe as claimed. The June 5, 2023, and June 22, 2023, dates printed on the USPS label records are prior to the date of our summary dismissal and so cannot support his assertion. Therefore, the Petitioner has provided no basis for us to excuse the late filing of his motion to reopen as a matter of discretion.

Accordingly, the Petitioner has not provided new facts or new evidence in support of the motion to reopen that would overcome our decision to dismiss his prior motion as untimely filed.

II. MOTION TO RECONSIDER

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). Although the Petitioner filed a combined motion to reopen and reconsider, he does not assert that our prior decision was based on an incorrect application of law or policy, or that it was incorrect based on the record before us when we issued our prior decision. The Petitioner has not met the requirements of a motion to reconsider.

III. CONCLUSION

For the reasons discussed, the Petitioner has not provided proper cause for reopening or reconsideration of our prior decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.