



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

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

In Re: 33606821

Date: SEP. 06, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Professional)

The Beneficiary sought to obtain lawful permanent resident status based on a job offer as a “business manager.” The Petitioner, a wholesale and retail importing business, requested his classification as a professional under the third-preference immigrant visa classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center revoked the approval of the petition, concluding that the record did not establish that the Beneficiary is qualified for the offered position. The Beneficiary filed an appeal, which we dismissed, concluding that he did not overcome the grounds for revocation.¹ The Beneficiary subsequently filed combined motions to reopen and motion to reconsider, which we dismissed as untimely filed. The matter is now before us on combined motions to reopen and reconsider.

As a movant in revocation proceedings, the Beneficiary 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.

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). 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).

Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the issue before us is whether the Beneficiary has established that our decision to dismiss his prior motion was based on an incorrect application of law or U.S. Citizenship and Immigration

¹ The Director determined that under *Matter of V-S-G- Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017), the Beneficiary is eligible to be treated as an affected party in revocation proceedings.

Services (USCIS) policy and incorrect at the time we issued the decision. We will determine whether he has submitted new facts, supporting by documentary evidence, that would warrant reopening.

We dismissed the Beneficiary's prior combined motions after determining that the Form I-290B, Notice of Appeal or Motion, was not timely filed. A motion on an unfavorable decision must be filed within 33 calendar days of the date the decision was mailed. 8 C.F.R. § 103.5(a)(1)(i), 103.8(b). The date of filing is the date of actual receipt at the designated filing location. *See* 8 C.F.R. § 103.2(7)(i).

We mailed our decision dismissing the Beneficiary's appeal on October 12, 2023. The Beneficiary's Form I-290B seeking reopening or reconsideration of our decision was received at the designated filing location on November 15, 2023, which is 34 days after the date of our unfavorable decision.

In a brief submitted with the instant motion, the Beneficiary emphasizes that, pursuant to 8 C.F.R. § 103.5(a)(1)(i), USCIS has the discretion to excuse the untimely filing of a motion to reopen if it is demonstrated that the delay was reasonable and beyond the control of the affected party. The Beneficiary asserts that he mailed the Form I-290B for next-day delivery on November 13, 2023, it was received at a Phoenix, Arizona postal facility on November 14, 2023, but it was not delivered to the designated filing location in Phoenix until November 15, 2023. He states:

It is important to note that the arrival of the package at the city's postal facility is significant as it demonstrates that my mail was under the control of the delivery service and effectively within the intended delivery area before the filing deadline. This arrival meets the procedural requirements of being 'in service' in the appropriate jurisdiction within the prescribed timeframe, aligning with USCIS regulation 8 C.F.R. 103.8(b), which states, "Service by mail is complete upon mailing."

The Beneficiary maintains that he mailed the previous Form I-290B in good faith, adhered to expected timelines, and that "the slight delay was due to circumstances entirely beyond my control." In support of the motion, he submits a USPS Tracking Plus Statement showing his package was accepted for mailing on November 13, 2023, arrived at a USPS facility in Phoenix on November 14, 2023, and was delivered on November 15, 2023.

Upon review, the Beneficiary has not shown proper grounds for reopening or reconsideration. Although the Beneficiary submits new facts related to the mailing of the prior motion, the record does not support his claim that the late filing was reasonable and beyond his control, or corroborate his suggestion that USPS was responsible for the claimed delay in delivery. Although he states that he mailed the prior motion using next-day delivery, the record shows that the package was mailed on November 13, 2023, using USPS Priority Mail, with an expected delivery date of November 15, 2023, printed on the shipping label. He did not provide evidence that the package was expected to be delivered on or before November 14, 2023, at the time he mailed it.

Moreover, the Beneficiary's reliance on 8 C.F.R. § 103.8(b) is misplaced, as that regulation applies to the service of decisions and other notices by USCIS, and not to forms and other benefit requests filed with USCIS. As noted, the date of filing is not the date of mailing but the date of actual receipt at the designated filing location. 8 C.F.R. § 103.2(7)(i).

While the Beneficiary has submitted new facts in support of the motion to reopen, he has not shown that the untimely filing of the previous motion was reasonable and beyond his control or otherwise provided proper cause for reopening. On motion to reconsider, the Beneficiary has not established that our decision to dismiss his prior motion as untimely filed was based on an incorrect application of USCIS law or policy or that the decision was incorrect based on the evidence in the record at the time of our 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.