U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22836265

Date: NOV. 29, 2022

Motion on Administrative Appeals Office Decision

Form I-485, Application for Adjustment of Status of a U Nonimmigrant

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on her "U" derivative nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), and we dismissed the Applicant's appeal and a subsequent motion to reopen and to reconsider our decision. We then rejected the Applicant's subsequent motion on our decision and dismissed a third combined motion to reopen and reconsider that decision. The matter is now before us on fourth combined motion to reopen and to reconsider. Upon review we will dismiss this combined motion to reopen and to reconsider.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i).

A motion to reconsider is based on an incorrect application of law or policy to the prior decision. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The Applicant, a native and resident of Mexico, initially entered the United States in 1989 without inspection, admission, or parole. In October 2013, she was granted U-1 nonimmigrant status based upon the murder of her son; she timely filed the instant U adjustment application in August 2017.

On fourth combined motion the Applicant requests that we reopen her case and reconsider the arguments that we had not addressed in her third combined motion to reopen and motion to reconsider. She repeats the argument presented in the third motion that we should excuse her untimely filed motion to reopen as it was beyond her control. Through counsel, the Applicant notes that in the December

18, 2020, USCIS COVID-19 guidance on flexibilities, the Form I-290 B, Notice of Appeal or Motion, was included along with requests for evidence, notices of intent to deny and that under a section titled "Response Due Date," USCIS indicated in one sentence that "the above notices and requests" could be submitted 60 calendar days after the due date, but in another provided "different information for... I-290B filings (60 calendar days from the date of decision)." Counsel for the Applicant contends that these sentences together could be construed as allowing a Form I-290B to be filed either after the response due date set in the notice or 60 days after the date of the notice. Accordingly, counsel argues that the Applicant's untimely filed motion to reopen should be excused as a matter of discretion because, due to the vagueness of the USCIS guidance, counsel made a "reasonable mistake" that was beyond the Applicant's control when she filed the motion within the more "expansive and lenient" interpretation.

As we explained in our prior decision, incorporated here by reference, the December 2020 USCIS COVID-19 guidance on flexibilities clearly stated that these flexibilities extended to the "[f]iling date requirements for the Form I-290B."[1] Further, as counsel for the Applicant correctly notes on motion, in the section titled "Response Due Date," this policy guidance differentiated between the flexibilities extended to "notices and requests" and those extended to the filing dates of Forms I-290B, explicitly stating that USCIS would "consider ... a Form I-290B received up to 60 calendar days from the date of the decision before we take any action." The Applicant has not shown, by a preponderance of the evidence, that this guidance was sufficiently vague as to lead to a delay in filing the motion to reopen that was beyond her control. Accordingly she has not established that our prior decision dismissing her combined motion to reopen and to reconsider on this ground was in error.

The Applicant also asserts that the delay in filing her motion to reopen should be excused as this delay was reasonable. We need not address this argument because the Applicant has not established that the delay in filing her motion to reopen was beyond her control. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

III. CONCLUSION

The Applicant has not established that that our prior decision was erroneous based upon evidence in the record at the time of the decision or that we incorrectly applied law and policy in reaching that decision, she has not satisfied the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3). She further has not offered documentary evidence of new facts and therefore has not satisfied the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(2).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] *See* "USCIS Extends Flexibility for Responding to Agency Requests," (Dec. 18, 2020) https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-2.