U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25767435

Date: MAY 24, 2023

Appeal of Vermont Service Center Decision

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

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 his "U" nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Adjust Status or Register Permanent Residence (U adjustment application), concluding that a favorable exercise of discretion was not warranted. The Applicant submitted two subsequent appeals, which were rejected. The Director dismissed a subsequent motion to reopen as untimely. The matter is now before us on appeal.

The Applicant 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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

As an initial matter, we note that our review on appeal is generally limited to the basis for the underlying adverse decision. Thus, we consider whether the Director properly dismissed the Applicant's motion to reopen as untimely.

Motions to reopen an agency decision must be filed within 30 days, or 33 days if the decision is served by mail. 8 C.F.R. § 103.5(a)(1)(i). The untimely filing of a motion to reopen may be excused in U.S. Citizen and Immigration Service's (USCIS) discretion where the record demonstrates that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i). USCIS will consider a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format. 8 C.F.R. § 103.2(a)(7). A benefit request which is rejected does not retain a filing date. *Id*.

USCIS implemented flexibilities on account of the COVID-19 pandemic under which USCIS will consider appeals and motions filed on the Form I-290B, Notice of Appeal or Motion (Form I-290B), as timely filed if filed within 60 calendar days of an unfavorable decision issued between March 1, 2020, and October 31, 2021. USCIS Alert, *USCIS Extends Flexibility for Responding to Agency Requests* (Mar. 30, 2022), https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1.

In January 2019, the Applicant filed a U adjustment application. On October 6, 2021, the Director denied the U adjustment application, concluding that a favorable exercise of discretion was not warranted. The Applicant attempted to file an appeal (first rejected appeal) on December 2, 2021, which was rejected by the USCIS lockbox due to an unacceptable money order. The Applicant resubmitted the appeal (second rejected appeal) on December 15, 2021, or 70 days after the Director's denial. The Vermont Service Center declined to take favorable action under 8 C.F.R. § 103.3(a)(2)(iii) and forwarded the appeal to our office, and we rejected the appeal as untimely. The Applicant subsequently filed a late motion to reopen the Director's original decision on May 16, 2022. The Director dismissed the motion based on findings that the motion was not timely submitted, and the Applicant had not sufficiently established that the delay in filing was not reasonable and beyond his control.

On appeal, the Applicant does not dispute the finding that the motion to reopen was untimely. He asserts, through counsel, that the delay in filing his motion to reopen was reasonable and beyond his control. The Applicant explains that the current motion to reopen was filed late, because his previous appeal was rejected due to a minor deficiency that was beyond his control. Specifically, the Applicant stated the money order could not "be processed by the date of acceptance listed on the instrument before a service charge is applied." The Applicant argues that this constitutes "a minor procedural error in payment outside of [his] control because he did his due diligence prior to filing the Form I-290B with what he believed to be the correct fee." The record contains an affidavit from the Applicant's counsel stating she "was not aware that there would be an additional service fee charged for the cashing of the money order" until it was returned with the first rejected appeal.

The Applicant has not established that the filing of his late motion to reopen was either reasonable or beyond his control. 8 C.F.R. § 103.5(a)(1)(i). Contrary to counsel's assertion, the record contains a copy of the money order which states that the "purchaser and payee are subject to terms and conditions including a $3.00 per month service fee if this instrument is presented for payment after one (1) year from the date of purchase." Therefore, the record indicates the Applicant had notice that the money order was subject to a service fee and its value would decrease accordingly.

Additionally, the instructions to Form I-290B indicate that "each form must be accompanied by the appropriate filing fee." Form I-290B, Instructions for Notice of Appeal or Motion, at 2; *see also* 8 C.F.R. § 103.2(a)(1). Further, "if a check or other financial instrument used to pay a fee is dated more than one year before the request is received, the payment and request may be rejected." 8 C.F.R. § 103.2(a)(7)(ii)(D). Finally, the regulations clearly state that an application or petition will be rejected if it is not "[f]iled in compliance with the regulations governing the filing of the specific application, petition, form, or request" and a rejected application or petition will not retain a filing date. 8 C.F.R. § 103.2(a)(7)(ii).

Therefore, USCIS correctly rejected the appeal that the Applicant submitted on December 2, 2021. It follows that the failure to satisfy the filing deadline for his motion to reopen was neither reasonable nor beyond his control, since the form, regulations, and the money order itself informed the Applicant of the filing requirements. While we acknowledge the hardship this may cause, filing deadlines are essential to the function of the immigration system so that the agency and the affected party may bring cases to a final conclusion. *See Matter of Morales-Morales*, 28 I&N Dec. 714, 716 (BIA 2023).

"Filing deadlines . . . necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced." *Id.* (quoting *United States v. Locke*, 471 U.S. 84, 101 (1985)).

As the Director properly dismissed the late motion, we decline to reach and hereby reserve the Applicant's argument that USCIS erred when the second rejected appeal was not treated as a motion by the Vermont Service Center. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(2); *cf, e.g.*, *Tri-V's Homes Inc. v. DHS*, 2009 WL 10690402, at *5 (C.D. Cal. July 29, 2009) (examining USCIS appellate regulations and concluding that the service center did not abuse discretion in forwarding a Form I-290B marked as a motion to the AAO for consideration as an appeal pursuant to 8 C.F.R. § 103.3(a)(2)(iv)), *aff'd Tri-V's Homes Inc. v. DHS*, 418 F. App'x 615 (9th Cir. 2011).

In conclusion, the Applicant filed his motion to reopen with USCIS on May 16, 2022, or 222 days after the underlying unfavorable decision of October 6, 2021. As this exceeds the 33-day filing period mandated by regulations (and the 60-day period with COVID extension), we agree with the Director's determination that the motion was untimely filed. Furthermore, as the Applicant did not establish that the delay was reasonable or beyond his control, we agree that the late filing should not be excused as a matter of discretion. Consequently, we will dismiss the appeal.

ORDER: The appeal is dismissed.