U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17545736

Date: MAY 11, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), and dismissed a subsequently filed motion to reopen and to reconsider. The Petitioner now appeals the Director's dismissal of his combined motion to reopen and to reconsider. On appeal, the Petitioner contends that the Director erred in concluding that his combined motion was untimely filed and reasserts his eligibility for the classification sought.

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

I. LAW

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 the 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).

Motions to reopen or reconsider must be filed within 30 days of the decision, or 33 days if the decision is served by mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). USCIS may, in its discretion, excuse the untimely filing of a motion to reopen 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). There is no comparable authority to excuse an untimely filed motion to reconsider. *See id.*

U.S. Citizenship and Immigration Services (USCIS) implemented special rules on account of the current COVID-19 pandemic under which USCIS will consider appeals and motions filed on the Form I-290B, Notice of Appeal or Motion, as timely filed if filed within 63 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/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-3 (last visited May 11, 2022); *see also* 8 C.F.R. §

103.8(b) (adding three days to filing deadlines if USCIS serves decisions or notices by mail). USCIS later extended the Form I-290B filing deadline again from 60 days to 90 days where the underlying USCIS decision was issued between November 1, 2021, and July 25, 2022. USCIS Alert, *supra*.[1]

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Petitioner, a native and citizen of Israel, filed the instant VAWA petition in January 2018 based upon marriage to his former U.S. citizen spouse, A-P-D-,[2] whom he divorced in [redacted] 2019. On July 20, 2020, the Director denied the VAWA petition, determining that the Petitioner had not established he resided with his U.S. citizen spouse and that he entered into marriage with her in good faith as required by the Act and regulation. On October 5, 2020, the Petitioner attempted to file a Form I-290B seeking to reopen and reconsider the Director's decision. On October 14, 2020 USCIS rejected the Form I-290B due to an incorrect filing fee. The Petitioner then filed this Form I-290B on October 22, 2020 with the proper filing fees. The Director dismissed the combined motion because it had been untimely filed more than 60 calendar days after the July 2020 decision.

On appeal, the Petitioner contends that the Director erred in dismissing his motion as untimely filed and requests that the underlying VAWA petition be reopened. He asserts that his motion was timely filed with the Director because he was "afforded an additional 60 days given USCIS Covid-19 response extended deadline" and this additional 60 days, when combined with the 33 days provided by regulation, had the effect of extending the motion filing deadline to 93 days to October 21, 2020. He argues that his motion was actually timely received by USCIS on that date, rather than on October 22, 2020, as indicated on the USCIS receipt notice issued.

Even if the Petitioner's motion to the Director was received by USCIS on October 21, 2020, as the Petitioner asserts, the motion was still untimely. Contrary to the Petitioner's assertions, USCIS COVID-19 extended filing flexibilities, initially announced in March 2020 and extended several times, did not add an *additional* 60 days to the original 30-day deadline provided by regulation for filing a Form I-290B. Rather, as stated above, USCIS extended the Form I-290B filing deadline to a 60-day deadline if the adverse USCIS decision was issued between March 1, 2020 and October 31, 2021. *See* USCIS Alert, *supra* (granting "up to 60 calendar days from the date of the [adverse USCIS] decision" to file a Form I-290B if the decision was issued between March 1, 2020, and October 31, 2021).

The record here reflects, and the Petitioner acknowledges, that the Director denied his VAWA petition on July 20, 2020. Accordingly, per USCIS' COVID flexibilities policy in effect on that date, the Petitioner had up to 60 calendar days from the date of that decision to file his motion with the Director (or 63 days if the decision was mailed). However, as discussed above, the Petitioner did not file the Form I-290B motion to the Director until October 22, 2020, or 94 calendar days after the Director's decision. Although the Petitioner initially attempted to file his Form I-290B earlier on October 5,

[1] This 90-day filing period under the COVID-19 extended filing flexibilities did not apply to the Petitioner's Form I-290B before the Director as the underlying Director's decision on his VAWA petition was issued in July 2020.
[2] Initials are used to protect the privacy of this individual.

2020, it was rejected for lack of a correct filing fee and therefore did not retain a filing date. *See* 8 C.F.R. § 103.5(a)(1)(i (stating that a benefit request which is rejected will not retain a filing date). Moreover, even if the October 5th filing date for the rejected submission had been retained, it was still untimely as it was submitted 77 days after the date of the Director's decision. The Director therefore correctly determined that the Petitioner's combined motion to reopen and reconsider was untimely filed, even under extended filing flexibilities in effect at that time.

We note the Petitioner's explanation on appeal that he initially submitted his Form I-290B on October 5, 2020, that the Director did not reject this submission until nine days later, and that he did not receive the rejection notice for another five days on October 19. We further note the evidence provided on appeal showing that following the rejection, he promptly filed the Form I-290B with the correct filing fee such that it was received by the Director on October 22, 2020. However, the Petitioner's explanations are insufficient to excuse the untimely filing of his motion to reopen and reconsider. As stated, the late filing of the Petitioner's motion to reconsider to the Director may not be excused. 8 C.F.R. § 103.5(a)(1)(i). Although USCIS may excuse the untimely filing of the Petitioner's motion to reopen if he shows that the delay in filing was reasonable and beyond his control, he has not satisfied his burden to make such a showing. *See id.* As noted, the Petitioner's attempted October 5, 2020 filing of his Form I-290B was already untimely as of that date. Notwithstanding the Petitioner's subsequent efforts to promptly refile his Form I-290B with the Director after USCIS' rejection, he offers no explanation why he delayed filing until October 5th and has not otherwise shown that the delay in filing was reasonable and beyond his control such that the untimely filing of his motion to reopen should have been excused. We therefore find no error in the Director's decision dismissing the Petitioner's motion to reopen and reconsider as untimely.

ORDER: The appeal is dismissed.