U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26349284

Date: JUN. 15, 2023

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Abused Spouse of U.S. Citizen or Lawful Permanent Resident)

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not establish, among other things, that the Petitioner married his U.S. citizen spouse in good faith. We dismissed a subsequent appeal and five combined motions. The matter is now before us on a sixth combined motion to reopen and reconsider. 8 C.F.R. §§ 103.5(a)(2), (3).

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.

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.

On current motion to reopen, the Petitioner submits a new brief and copies of evidence previously considered and contained in the record. Accordingly, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion and the current motion to reopen is dismissed.

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). 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.

In December 2018, we denied the Petitioner's third combined motion to reopen and reconsider as untimely filed. We explained that motions on an unfavorable decision must be filed within 33 days pursuant to 8 C.F.R. §§ 103.5(a)(1) and 103.8(b). On subsequent motion, the Petitioner conceded that the motion was filed untimely but stated that the delay in filing was reasonable and beyond his control due to weather and carrier issues. In our fourth and fifth motion decisions, incorporated here by reference, we explained that we may excuse the untimely filed motion to reopen, in our discretion, if the Petitioner demonstrates that the delay was reasonable and beyond his control pursuant to 8 C.F.R. § 103.5(a)(1)(i). We further acknowledged the mailing delays and weather conditions he asserted resulted in the untimely motion filing. However, we explained that the Petitioner had not provided an explanation as for why the motion was mailed two days before it was due to USCIS and that provided a sufficient basis upon which to establish that the delay was reasonable and beyond his control.

On current motion to reconsider, the Petitioner objects to our determination that he did not provide an explanation for why he did not send his motion request until two days before the expiration of the filing window but does not provide any additional facts regarding why he could not procure and submit the requisite evidence earlier beyond the generalized statements that he and his counsel "work[ed] diligently" to gather it. The Petitioner bears the burden of establishing eligibility, including that the delay in filing his motion was both reasonable and beyond his control. *Chawathe*, 25 I&N Dec. at 375-76. The assertions on current motion are not sufficient to warrant a departure from our previous determination, as they principally reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). Accordingly, we see no reason to re-adjudicate the issue anew and, therefore, the motion to reconsider is likewise dismissed and the underlying petition remains denied. [1]

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] We acknowledge that the Petitioner has provided additional arguments regarding his underlying eligibility for classification under VAWA with the current combined motions. However, as the Petitioner has not overcome the procedural deficiencies in his motion, we need not reach the merits of his claim. *See INS v. Bagamasbad,* 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).