



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

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

In Re: 24229127

Date: AUG. 25, 2022

Service Motion on Administrative Appeals Office Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner seeks classification as a special immigrant juvenile (SIJ) under sections 101(a)(27)(J) and 204(a)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The Director of the National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we dismissed the Petitioner's appeal and his initial motion to reopen and reconsider. The Petitioner subsequently filed a second motion to reopen and reconsider that we erroneously rejected as an untimely appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1) on August 19, 2022, rather than dismissing it as an untimely motion. We now reopen the prior proceedings *sua sponte* pursuant to 8 C.F.R. § 103.5(a)(5) to correct this error and reissue our decision on the Petitioner's second motion, which we will dismiss as untimely.

A motion to reopen must be based on documentary evidence of new facts. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and that it was incorrect based on the evidence of record at the time of the initial decision. 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.

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 or petitioner. 8 C.F.R. § 103.5(a)(1)(i). There is no comparable authority to excuse an untimely filed motion to reconsider. *See id.* Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

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 Aug. 22, 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 adverse decision in this case was issued by us on February 1, 2021. As per the COVID-19 filing flexibility rules noted above, the filing of a Form I-290B in response to a decision issued at that time is considered timely filed if received within 63 calendar days of that decision. The Petitioner filed his combined motion to reopen and reconsider on May 5, 2021, 93 days after the adverse decision. As this exceeds 63 calendar days, the Petitioner's motion was not timely filed. USCIS regulations do not provide for discretion to excuse the untimely filing of a motion to reconsider. As for the motion to reopen, the Petitioner has not asserted, and the record does not otherwise reflect, the delay in filing was reasonable and beyond his control such that the delay in filing may be excused under 8 C.F.R. §103.5(a)(1)(i).

In addition, even if the Petitioner had demonstrated that the delay in filing was reasonable, our review indicates that his motion does not satisfy the motion filing requirements at 8 C.F.R. § 103.5(a)(2) and (3) or establish eligibility for the requested immigration benefit, as his motion to reopen is not accompanied by any new evidence or fact, and he has not established any legal or factual error in our prior decision to warrant reconsideration. The Petitioner's combined motion, even if deemed timely filed, therefore does not overcome our previous determinations on appeal and on the Petitioner's first motion.

For the foregoing reasons, the Petitioner's motion to reopen and reconsider is dismissed as untimely.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed