



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

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

In Re: 23033675

Date: NOV. 30, 2022

Appeal of National Benefits Center 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). The Petitioner submitted two subsequent combined motions to reopen and reconsider, which were rejected as improperly filed. The Director dismissed a subsequent third motion to reopen and reconsider as untimely. The matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews 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, the appeal will be dismissed.

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 Petitioner's motion to reopen and reconsider as untimely.

Motions to reopen and reconsider 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), 103.8(b). The untimely filing of a motion to reopen may be excused in USCIS' discretion where the record demonstrates that the delay was reasonable and beyond the control of the petitioner. 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 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 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 November 2017, the Petitioner filed a SIJ petition, which the Director denied based on a determination that the Petitioner had not established that the consent of USCIS was warranted,

explaining that the record did not establish that the juvenile court ordered any relief from parental maltreatment, beyond a dependency declaration and special findings allowing the Petitioner to seek SIJ classification. The Petitioner attempted to file a combined motion to reopen and reconsider the Director's decision on July 26, 2021, and August 6, 2021. The record indicates that USCIS rejected both combined motions, as they were not fully completed. The Petitioner subsequently resubmitted the combined motion to reopen and reconsider on August 27, 2021. The Director dismissed the combined motion based on findings that the motion was not submitted within the 33 days (60 days with COVID extension) and the delay in filing was not reasonable and beyond the Petitioner's control.

On appeal, the Petitioner, alleges that she timely filed her combined motion to reopen and reconsider on July 26, 2021. She acknowledges that USCIS rejected that filing because the Form I-290B was not properly completed, as it was missing required information about her address, and returned it to her. The Petitioner argues that USCIS rejected her filing in error, as the missing information on her Form I-290B could have been found on the accompanying Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. She further asserts that USCIS could have issued a request for evidence for the missing information rather than rejecting her combined motions, she is not responsible for the typographical error, and rejecting her combined motion for "scriptor error" will cause her to suffer severe detriment, which is contrary to the purpose of the SIJ classification.

The Petitioner initially attempted to file a combined motion to reopen and reconsider on July 26, 2021, but it was rejected as the Form I-290B was not properly completed. The Petitioner does not dispute that this Form I-290B was not properly completed. Pursuant to 8 C.F.R. § 103.2(a)(1), an application or petition "must be ... executed in accordance with the form instructions .... " 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). The instructions to Form I-290B indicate that the filer must "[a]nswer all questions fully and accurately," and the form's instructions are "incorporated into the regulations requiring its submission." 8 C.F.R. § 103.2(a)(1).

The Petitioner further argues that USCIS erred in rejecting the original combined motion to reopen and reconsider and should have instead issued a request for evidence (RFE) to cure the error in her reported address. Contrary to the Petitioner's contentions, when a benefit request is not executed at filing, as was the case for the original combined motion to reopen and reconsider, the correct course of action for USCIS is to reject the filing and to not retain the filing date. 8 C.F.R. § 103.2(a)(7); *see* 1 *USCIS Policy Manual* B.6(B), <https://www.uscis.gov/policymanual>. We further note that an RFE is only proper when an adjudicating officer needs more information to adjudicate a properly submitted benefits request and an RFE is not a permissible action for a filing deficiency. *See* 8 C.F.R. § 103.2(a)(7); 1 *USCIS Policy Manual*, *supra*, at E.6(F). Therefore, the original combined motion to reopen and reconsider was correctly rejected.

The Petitioner asserts that USCIS also improperly rejected her second attempt to file a combined motion to reopen and reconsider. She claims that the attempted submission from August 7, 2021, included "both a corrected I-290B Motion to Reconsider/Motion to Reopen and the original I-290B Motion to Reconsider/Motion to Reopen" and that USCIS issued the second rejection without reviewing the corrected I-290B. Even if we considered this combined motion to have been improperly

rejected, it would have been untimely and filed outside the 33-day period mandated by regulations (and outside the 60-day period with COVID extension).

The Petitioner properly filed her combined motion to reopen and reconsider with USCIS on August 27, 2021, 94 days after the underlying unfavorable decision. As this exceeds the 33-day 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 Petitioner did not provide an explanation for the delay in filing the motion, she also did not establish that the delay was reasonable and that the late filing should be excused as a matter of discretion. Consequently, we will dismiss the appeal.

**ORDER:** The appeal is dismissed.