



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

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

In Re: 24187348

Date: JAN. 3, 2023

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 (SIJ petition), and we dismissed both a subsequent appeal and a combined motion to reopen and reconsider. The matter before us is a second motion to reopen. 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). We will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Furthermore, the regulations require that a motion to reopen be filed within 30 days of the decision that the motion seeks to reopen, including three days for service by mail. 8 C.F.R. § 103.5(a)(1)(i); 8 C.F.R. § 103.8(b). The regulations specific to a motion to reopen indicate that untimeliness may be excused "where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." 8 C.F.R. § 103.5(a)(1)(i).

USCIS has granted flexibility with respect to the filing of motions due to the coronavirus pandemic. Consistent with USCIS guidance, we accept Forms I-290B filed up to 60 calendar days from the date of decisions issued anytime between March 1, 2020, and September 30, 2021. See 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>.

Upon review, we will dismiss the motion. The record reflects that the Petitioner's motion dismissal was mailed on December 28, 2020. The Petitioner's instant form I-290B was received at the designated filing location on August 11, 2022, which is 591 days after the decision. Therefore, the second motion was untimely.

The Petitioner contends that her second motion is timely and that, with the submission of a new amended SIJ order, she has established her eligibility for SIJ classification. She asserts that this motion is untimely due to the ineffective assistance she received from her prior attorney. However, she argues that it should be considered timely because it was filed 93 days after [REDACTED] 2022, when she received a new SIJ order. According to the brief and affidavits submitted on motion, the Petitioner began working with current counsel of record on her asylum application in February 2021, with the understanding that her prior attorney would continue to work on her SIJ petition. In October 2021, counsel of record corresponded with her prior attorney to ask about seeking an amended SIJ order to overcome the reason for our dismissal of her appeal. The Petitioner indicates that her prior attorney had not sought such an order, and that she subsequently began working with current counsel's firm in March 2022 on her SIJ petition. She additionally claims that she filed a complaint against her prior attorney with the Massachusetts Bar of Bar Overseers in June 2022 and that she has met procedural requirements laid out in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) regarding claims of ineffective assistance of counsel.

The evidence submitted on motion by the Petitioner does not establish the delay in filing the instant motion to reopen was beyond her reasonable control. While we acknowledge the claims by the Applicant of ineffective assistance of counsel, this does not explain how the lengthy delay in her case was reasonable. Based on the information provided by the Petitioner, there was an approximately ten-month delay between the date of our most recent adverse decision (December 2020) and when she sought to follow up with the prior attorney (October 2021) to cure the deficiency identified in that decision. The Petitioner also describes delays of several months after October 2021, during which she acquired new counsel, sought a new SIJ order, and eventually filed the motion to reopen. She has not detailed specific circumstances to show that these delays were reasonable or beyond her control. We therefore find that the Applicant's motion must be dismissed as untimely.

ORDER: The motion to reopen is dismissed.