U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19917967

Date: MAY. 18, 2022

Motion on Administrative Appeals Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant seeks permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), because she will be inadmissible upon departing from the United States for having been previously ordered removed. *See* section 212(a)(9)(A)(ii) of the Act.

The Director of the New York, New York Field Office denied the Form I-212, Application for Permission to Reapply for Admission (Form I-212), concluding the Applicant did not establish that a favorable exercise of discretion was warranted in her case. The Applicant later filed an appeal, which we rejected as untimely. The matter is now before us again on a motion to reopen and a motion to reconsider. On motion, the Applicant contends that it complied with guidance issued by U.S. Citizenship and Immigration Services (USCIS) extending the time required to file an appeal, and as a result, asserts that the appeal was timely filed. Upon review, we will dismiss the motion to reopen and the motion to reconsider.

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as, for instance, submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

I. MOTION TO REOPEN

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). In support of the motion to reopen the Applicant submits a brief and no additional

documentary evidence or affidavits. As such, the Applicant has not met the requirements of the motion to reopen and it must be dismissed.

II. MOTION TO RECONSIDER

A motion to reconsider must establish that we based our decision 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).

In rejecting the Applicant's appeal, we acknowledged that USCIS extended the time within which an appeal must be timely filed to 60 days[1] but emphasized that since it was filed 89 days after the issuance of the Director's decision, it was untimely. *See* USCIS Extends Flexibility for Responding to Agency Requests, https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1 (released Sep. 11, 2020).[2]

On motion, the Applicant contends the communication of the flexibilities for filing a timely appeal were ambiguous, and it appears to assert that it complied with the 60-day filing requirement provided by the flexibilities. The Applicant states that the 60-day period for filing a timely appeal also includes the 30 days discussed in the regulations, effectively making the time-period for filing a timely appeal 93 days (including time allocated by the regulations for mailing).

We disagree with the Applicant's interpretation of the flexibilities provided in the September 2020 USCIS announcement. The USCIS announcement clearly stated that it was extending the time-period to timely respond to agency requests to 60 days, including filing a Form I-290B, Notice of Appeal or Motion. Specifically, it stated that USCIS will consider a Form I-290B "received up to 60 calendar days from the date of the decision before we take any action." *Id.* There is no indication in the announcement that this 60 days also included an additional 30 days, and we do not agree that the language of this announcement is ambiguous. As the Director's decision was issued on October 14, 2020, the time period for filing a timely appeal was 63 days from the date of that decision when the extra three days for service by mail is applied. *See* 8 C.F.R. § 103.8(b). However, as indicated in the record and through the Applicant's own admission, the Form I-290B was received at the designated USCIS filing location on January 11, 2021, 89 days after the Director's decision. As such, it was filed untimely. The Applicant has not submitted law or policy establishing that our prior decision to reject its appeal was incorrect at the time of that decision. Therefore, the motion to reconsider must be dismissed.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause to reopen or to reconsider our previous decision.

ORDER: The motion to reopen is dismissed.

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[1] We note that the regulations, without such flexibility, require that an appeal of an unfavorable decision be filed within 33 days of the calendar date of the decision being mailed. *See* 8 C.F.R. §§ 103.3(a)(2)(i), 103.8(b).

[2] The USCIS announcement stated that the flexibility applied if the issuance date listed on the decision was between March 1, 2020, and Jan. 1, 2021. Here, the Director's decision is dated October 14, 2020.

FURTHER ORDER: The motion to reconsider is dismissed.