U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23291371

Date: JAN. 25, 2023

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa and seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(9)(B)(v). The Director of the Nebraska Service Center denied the waiver application. The Applicant filed an appeal, but it was rejected because it was untimely filed. The matter is now before us on combined motions to reopen and reconsider.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration; (2) be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and (3) establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We cannot grant a motion that does not meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

The regulations make no provision for filing a motion to reopen or reconsider a rejected appeal. The regulations at 8 C.F.R. § 103.5(a)(1)(f) and (3) refer to reconsideration of the "prior decision," and in this case, we rejected the Applicant's appeal because it was untimely filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

On motion, the Applicant contends ineffective assistance of counsel and that his appeal was filed late due to his counsel's error. However, as we noted in our notice of rejection, 8 C.F.R. §§ 103.3(a)(2)(i) and 103.8(b) provide that an appeal must be filed within 33 days of the adverse decision.[1] We lack the authority to waive requirements set by regulations. *See United States v. Nixon,* 418 U.S. 683, 695-96 (1974) (holding that as long as regulations remain in force, they are binding on government officials).

[1] When the adverse decision was issued, U.S. Citizenship and Immigration Services (USCIS) advised that it would consider a Form I-290B filed up to 60 calendar days from the issuance of such a decision. *See* USCIS Alert, *USCIS Extends Flexibility for Responding to Agency Requests,* dated December 30, 2021, https://www.uscis.gov/newsroom/alerts/uscis-extends-covid-19-related-flexibilities (noting that "[u]nder previously announced flexibilities, USCIS considered a Form I-290B … if the form was filed up to 60 calendar days from the issuance of a decision by USCIS, and if such decision was issued between March 1, 2020, and Oct. 31, 2021, inclusive."). Here, the Applicant filed the appeal 90 days after the adverse decision.

We acknowledge the remainder of the Applicant's arguments on motion relating to the merits of the rejected appeal. However, when we reject an appeal, the appeal does not retain a filing date. *See* 8 C.F.R. §103.2(a)(7)(iii). Accordingly, there is no merits-based decision for us to review. *See AAO Practice Manual*, Ch. 4.5(a), https://www.uscis.gov/aao-practice-manual. Therefore, we will dismiss the Applicant's combined motions to reopen and reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.