U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-T-B-M-

DATE: MAR. 20. 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a waiver of the required job offer, and thus of the labor certification, if it is in the national interest.

The Director of the Texas Service Center denied the Petitioner's Form I-140, Immigrant Petitioner Alien Worker. We dismissed the Petitioner's appeal and denied her subsequent motion to reconsider.[1] The matter is now before us on motion to reconsider. For the reasons discussed below, we will deny the motion.

I. LAW

A motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reconsider are located at 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.

In order to properly file a motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the petitioner must file the motion within 30 days of the decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of submission, but the date of actual receipt with the proper signature and the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

With respect to counting days, the regulation at 8 C.F.R. § 1.2 provides:

> *Day*, when computing the period of time for taking any action provided in this chapter I including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period computed falls on a Saturday,

[1] *See Matter of M-T-B-M-*, ID# 14485 (AAO Nov. 19, 2015) and *M-T-B-M-*, ID# 11023 (AAO Sept. 20, 2016).

> Sunday, or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

II. ANALYSIS

We issued our appellate decision on November 19, 2015, and properly gave notice to the Petitioner that she had 33 days to file a motion. USCIS received the Form I-290B, Notice of Appeal or Motion, on December 23, 2015, or 34 days after the decision was issued. Accordingly, we denied her motion to reconsider as untimely.

Following our denial of her initial motion, the Petitioner has filed a second motion to reconsider. She contends that the delay in filing her initial motion "was unintentional."[2] In addition, she argues that Thanksgiving, a legal holiday, "is excluded in the counting of the 33 days" and therefore her initial motion was "timely filed."

The petitioner's interpretation is inconsistent with the language of the regulations and is not supported by any pertinent precedent decisions or USCIS policy. The regulation at 8 C.F.R. § 1.2 specifically states that legal holidays are included in computing the period of time unless the legal holiday falls on the "last day" of the allotted time period. When the "last day" of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. *Id.* With regard to the Petitioner's untimely motion, the "last day" of the allotted filing period, December 22, 2015, did not fall on a Saturday, Sunday, or the legal holiday of Thanksgiving.

The Petitioner has not met the requirements for a motion to reconsider as she has not shown that we erred in our previous analysis based on the record before us when she filed her initial motion. Further, the current motion to reconsider does not establish that our previous findings were based on an incorrect application of the law, regulation, or USCIS policy.

III. CONCLUSION

The Petitioner's motion does not show that our previous decision was based on an incorrect application of law or policy and does not overcome the grounds underlying that decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The motion to reconsider is denied.

Cite as *Matter of M-T-B-M*, ID# 2521194 (AAO Mar. 20, 2019)

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[2] The Petitioner does not cite to any regulatory exception regarding an unintentional failure to file a motion to reconsider within the required timeframe. We note that the regulation at 8 C.F.R. § 103.5(a)(i) describes limited circumstances under which a petitioner's failure to timely file a *motion to reopen* may be excused as a matter of discretion, but it includes no such provision for motions to reconsider.