



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

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

In Re: 27191702

Date: JUN. 09, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Other Worker)

The Petitioner, a church, seeks to employ the Beneficiary as a pastoral assistant. It requests classification of the Beneficiary as an unskilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This employment-based immigrant classification allows a U.S. employer to sponsor a noncitizen for lawful permanent resident status to work in a position that requires less than two years of training or experience.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had the continuing ability to pay the wage offered to the Beneficiary as of the priority date of this petition. The Petitioner subsequently filed a motion to reopen, which the Director dismissed as untimely filed. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 review 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, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

## I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). It must be filed within 30 days of the decision the motion seeks to reopen (33 days if the decision was sent by mail), but failure to file within this period may be excused in the discretion of U.S. Citizenship and Immigration Services (USCIS) if the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

## II. ANALYSIS

The sole issue before us on appeal is whether the Director properly dismissed the Petitioner's motion to reopen as untimely filed. The record indicates that the Director's decision was issued on August 1, 2022, and that the Petitioner's motion to reopen was received by USCIS 88 calendar days later on

October 28, 2022. Although this is outside of the 33 days allowed by regulation, USCIS announced filing flexibilities related to the COVID 19 pandemic in March 2020. In the announcement of the final extension to these flexibilities on January 24, 2023, USCIS confirmed that a Form I-290B, Notice of Appeal or Motion, would be considered if it was filed up to 90 days from the issuance of a decision made between November 1, 2021 and March 23, 2023.<sup>1</sup> Therefore, since the decision was issued during this timeframe and the Petitioner's motion was received within 90 days of the decision, the Director improperly dismissed the motion as untimely. We therefore withdraw the Director's decision and remand this matter for his consideration of the entirety of the record, including the Petitioner's motion and supporting documentation.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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<sup>1</sup> <https://www.uscis.gov/newsroom/alerts/uscis-extends-covid-19-related-flexibilities-1>