U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22685036

Date: NOV. 08, 2022

Motion on Administrative Appeals Office Notice of Rejection

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust her status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud or willful misrepresentation of a material fact.

The Director of the Oakland Park, Florida Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application). The Director concluded that the Applicant did not provide evidence that the denial of the application would result in extreme hardship to her U.S. citizen spouse and further determined that the record did not establish that her application warranted a favorable exercise of discretion.

The Petitioner subsequently filed an appeal of the Director's decision, which we rejected as untimely filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1). The matter is now before us on a combined motion to reopen and reconsider.

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). A motion to reconsider is based on legal grounds and must (1) state the reasons for reconsideration; (2) establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (3) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). We cannot grant a motion that does not meet applicable requirements. *See* 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)(i) and (3) refer to reconsideration of the "prior decision," and in this case we rejected the Applicant's appeal. When our office rejects an appeal, there is no merits-based decision for us to reopen or reconsider. Accordingly, we will dismiss the motion to reopen and the motion to reconsider because they do not meet the applicable requirements.

Nevertheless, we will briefly address the Applicant's claim that we improperly rejected the appeal as untimely filed.

The record reflects that the Director's adverse decision was issued on March 11, 2021. The regulations require the affected party to appeal an unfavorable decision within 33 calendar days of the date it was mailed. 8 C.F.R. §§ 103.3(a)(2)(i) and 103.8(b). Under U.S. Citizenship and Immigration Service (USCIS) flexibilities implemented during the COVID-19 pandemic, we may consider a Form I-290B filed within 63 calendar days of an unfavorable decision issued between March 1, 2020 and October 31, 2021.[1] Therefore, the Petitioner was required to file the appeal on or before May 13, 2021. We rejected the appeal because it was filed on June 1, 2021, which is 82 days after the adverse decision.

The Applicant claims that she filed her Form I-290B, Notice of Appeal or Motion on April 13, 2021, and that the June 1, 2021 was the date on which USCIS issued a receipt notice, not the date of filing. In support of this claim, she provides a copy of a Form I-797C Receipt Notice issued by the USCIS National Benefits Center for an I-290B with receipt number [redacted] While this USCIS notice shows a "receipt date" of April 13, 2021 and a "notice date" of June 1, 2021, this receipt number is associated with a motion to reconsider filed in connection with the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status. It is not the receipt notice for the Applicant's Form I-290B appealing the Director's denial of the Applicant's Form I-601.

The record includes a Form I-797C Rejection Notice indicating that the Applicant attempted to file her appeal of the Director's I-601 decision on April 12, 2021, but her submission did not include the correct filing fee and was therefore rejected and returned to her.[2] She resubmitted the Form I-290B, with the correct filing fee, and USCIS received it on June 1, 2021. Accordingly, the Applicant has not shown that we erred in determining that she filed her appeal on June 1, 2021, or that we erred by rejecting the appeal as untimely.

The Applicant also emphasizes that if an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*). The official having jurisdiction over determining whether an untimely appeal meets the requirements of a motion is the official who made the last decision in the proceeding, in this case the Director of the Oakland Park, Florida Field Office, not the Administrative Appeals Office. *See* 8 C.F.R. § 103.3(a)(l)(ii). The Director did not treat the untimely appeal as a motion and forwarded the matter to the AAO.

For the reasons discussed above, the Applicant's combined motions do not meet the applicable requirements and must be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] USCIS Alert, "USCIS Extends Flexibility for Responding to Agency Requests," (Sep. 24, 2021), https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-toagency-requests-4).

[2] 8 C.F.R. § 103.2(a)(7)(ii) provides that a benefit request which is rejected will not retain a filing date. Under 8 C.F.R. § 103.2(a)(7)(ii)(D), a benefit request that is submitted without the correct fee must be rejected.