



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

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

In Re: 6290309

Date: AUG. 17, 2020

Motion on Administrative Appeals Office Decision

Form I-918, Petition for U Nonimmigrant Status

The Petitioner seeks “U-1” nonimmigrant classification as a victim of qualifying criminal activity under sections 101(a)(15)(U) and 214(p) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(15)(U) and 1184(p). The Director of the Vermont Service Center denied the Form I-918, Petition for U Nonimmigrant Status (U petition) and concurrently denied the Petitioner’s Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application). The Director subsequently dismissed the Petitioner’s motions to reconsider as untimely. We dismissed the Petitioner’s appeal, and the matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion to reconsider.

I. LAW

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

When adjudicating a U petition, U.S. Citizenship and Immigration Services (USCIS) determines whether a petitioner is inadmissible, and has the authority to waive certain grounds of inadmissibility as a matter of discretion. Section 212(d)(14) of the Act, 8 U.S.C. § 1182(d)(14). U petitioners bear the burden of establishing that they are admissible to the United States or that any applicable ground of inadmissibility has been waived. 8 C.F.R. § 214.1(a)(3)(i). To meet this burden, an inadmissible U petitioner must file a waiver application in conjunction with the U petition, requesting waiver of any grounds of inadmissibility. 8 C.F.R. §§ 212.17, 214.14(c)(2)(iv). The denial of a waiver application is not appealable. 8 C.F.R. § 212.17(b)(3).

Petitioners must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

In our decision on appeal, we noted that the Director correctly dismissed the Petitioner's motions to reconsider as untimely. We explained that the Petitioner's initial motion filing, in July 2016, was properly rejected because it did not contain the proper filing fee, and that his subsequent filing in August 2016 was also properly rejected as untimely. We considered the Petitioner's arguments that the July 2016 filing should be accepted because the mailing deadline is not jurisdictional and may be waived, and that it should be considered a "constructive filing." However, we explained that the Petitioner did not cite to any legal authority for us to consider the late filing as timely, and that we lack the authority to waive the requirements of the statute, as implemented by the regulations. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). On motion, the Petitioner repeats his prior arguments and concedes that the legal authority he cited in support of his assertion that the motion should be accepted as a "constructive filing" do not address the laws governing his petition. He requests "some extrapolation," but still does not cite applicable legal authority in support of his assertions.

Further, the Petitioner alleges on motion that we failed to consider that under 8 C.F.R. § 103.5(1)(i), USCIS may excuse a late filing. To the contrary, we specifically addressed 8 C.F.R. § 103.5(1)(i), noting that it allows USCIS to excuse late filings of motions to reopen where the record shows that the delay was reasonable and was beyond the control of the petitioner, but does not provide similar discretion for motions to reconsider and therefore is not applicable in the Petitioner's case.

The Petitioner also repeats a prior request that we remand the matter to the Director to reconsider the Petitioner's waiver application on the merits. However, as discussed on appeal, we lack authority to review the Director's discretionary determination to deny his waiver application, 8 C.F.R. § 212.17(b)(3), and the Petitioner has not alleged that the Director erred in finding him inadmissible and therefore requiring a waiver.

The Petitioner has not established that our decision was based 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).

ORDER: The motion to reconsider is dismissed.