



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

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

MATTER OF M-K-L-S-

DATE: OCT. 26, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an opera singer, seeks classification as an “alien of extraordinary ability” in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Nebraska Service Center, denied the petition and we dismissed the subsequent appeal. The matter is now before us on a motion to reopen or a motion to reconsider.¹ Upon review, we will deny the motion as untimely filed.

A motion must be filed within 33 calendar days of the date that the unfavorable decision was served by mail. 8 C.F.R. §§ 103.5(a)(1)(i); 103.8(b). The filing date is the day USCIS receives the motion at the designated filing location, not the date the Petitioner mailed the motion. 8 C.F.R. § 103.2(a)(7)(i).

On August 11, 2016, we dismissed the Petitioner’s underlying appeal and served the unfavorable decision by mail. The decision stated that the Petitioner may file a motion within 33 days. USCIS received the motion, styled as a second appeal, on September 14, 2016, which is 34 days after the service date of the unfavorable decision. We initially rejected this Form I-290B administratively because the Appellant sent the Form I-290B to an improper filing location. However, for the purposes of determining whether this Form I-290B, ultimately filed on September 29, 2016, was filed timely we are treating it as if it were properly filed on September 14, 2016. Because that date is more than 33 days after the unfavorable decision date, we are denying the motion as untimely filed.

ORDER: The motion to reopen or reconsider is denied.

Cite as *Matter of M-K-L-S-*, ID# 174196 (AAO Oct. 26, 2016)

¹ The Appellant indicated on the Form I-290B that the form is filed as an appeal to the AAO. However, because the decision under review is a dismissed appeal this review would be a motion to reopen or a motion to reconsider. Because this Form I-290B is filed untimely, regardless of whether it is filed as a motion or an appeal, we need not clarify whether the Form I-290B is filed as a motion to reopen or a motion to reconsider.