



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

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

MATTER OF A-A-R-I-

DATE: SEPT. 13, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a center for painting and calligraphy exhibitions, seeks to classify the Beneficiary as an individual “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). This classification makes visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director, Nebraska Service Center, denied the petition. The Director concluded that the Petitioner had not provided documentation satisfying the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria. We dismissed the Petitioner’s appeal.

The matter is now before us on motions to reopen and reconsider. The Petitioner argues that the Beneficiary qualifies as an individual of extraordinary ability, and submits a reference letter and a program book. We will deny the motions.

I. LAW

In order to properly file a motion, 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 regulation at 8 C.F.R. § 1.2 explains that 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. 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).

II. ANALYSIS

The record indicates that we issued our decision on May 19, 2016. We properly gave notice to the Petitioner that it had 33 days to file a motion. The Form I-290B, Notice of Appeal or Motion, was received by U.S. Citizenship and Immigration Services on June 27, 2016, or 39 days after the decision was issued. Accordingly, the motions were untimely filed.

As it relates to motions to reopen, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that “failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.” There is no similar provision in the regulations for motions to reconsider. In this matter, the motions were not properly filed within the required thirty days and the Petitioner has not demonstrated that this delay was reasonable and beyond its control. The motions must therefore be denied as untimely filed.

III. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden. Accordingly, the motions are denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of A-A-R-I*, ID# 13777 (AAO Sept. 13, 2016)