



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

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

MATTER OF M-K-L-S-

DATE: JUNE 30, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an opera singer, seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those 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 of the Nebraska Service Center denied the Petitioner's Form I-140, Immigrant Petition for Alien Worker. We dismissed her appeal and denied a subsequent motion. The matter is now before us on a second motion. Upon review, we will deny the motion.

Regarding her prior motion, the Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that she was filing an appeal to us. However, because the decision under review was a dismissed appeal, we indicated that our review would be a motion to reopen or a motion to reconsider.<sup>1</sup> We denied her Form I-290B as untimely filed.<sup>2</sup> Specifically, the record indicates that we dismissed her initial appeal and served the unfavorable decision by mail on August 11, 2016. USCIS received the Form I-290B on September 14, 2016, 34 days after the service date of the unfavorable decision.<sup>3</sup>

The record reflects that the Petitioner filed her current Form I-290B as an appeal but indicated on her cover letter that it is a motion to reopen/reconsider. Again, we will treat her filing as a motion to reopen and a motion to reconsider since we do not have appellate jurisdiction over our own decisions. The Petitioner requests an additional 30 days to submit a brief and evidence. There is no regulation allowing a party to submit evidence in furtherance of a previously filed motion.

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<sup>1</sup> We do not exercise appellate jurisdiction over our own decisions.

<sup>2</sup> 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) and 103.8(b). The filing date is the day U.S. Citizenship and Immigration Services (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).

<sup>3</sup> We initially rejected the Petitioner's Form I-290B because she did not send it to a proper filing location. However, for the purposes of determining whether this Form I-290B, ultimately filed on September 29, 2016, was timely filed, we treated it as if it was submitted on September 14, 2016.

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Regardless, as of the date of this decision more than six months since the filing of the I-290B, we have received nothing further.

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. In the case here, the Petitioner has not provided new facts or established that we incorrectly applied law or policy in denying her prior motion as untimely filed. Accordingly, our previous decision remains denied.

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of M-K-L-S-*, ID# 416232 (AAO June 30, 2017)