



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

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

MATTER OF A-B-

DATE: APR. 12, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a performing artist, 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 petition. We dismissed the subsequent appeal and denied a motion to reopen as untimely. The matter is now before us on a motion to reopen and a motion to reconsider. Upon review, we will deny the motions.

### I. LAW

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. Upon filing, a motion must include all initial evidence required by applicable regulations and other USCIS instructions. 8 C.F.R. § 103.2(b)(1). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

### II. ANALYSIS

On July 12, 2017 we dismissed the Petitioner's appeal of the Nebraska Service Center's decision. On August 17, 2017 we received a Form I-290B, Notice of Appeal or Motion, indicating that it was filed as an appeal, rather than filed as a motion. We rejected the second appeal on September 12, 2017, because we do not exercise appellate jurisdiction over our own decisions and a dismissed appeal may not be appealed again. On September 27, 2017, USCIS received a Form I-290B indicating it is a motion to reopen the first appeal we dismissed on July 12. We denied the motion to reopen, finding that it was untimely filed.

On motion, the Petitioner asserts that she made a typographical error on the Form I-290B filed on August 17 and we should have treated the appeal as a motion. In the alternative, the Petitioner states

that the first I-290B was timely filed and that date should have been applied to the later filed motion to reopen.

Despite the Petitioner's claims that the Form I-290B filed on August 17 was intended to be a motion and not an appeal, the record does not support a finding that we erred in rejecting the appeal as improperly filed. The second Form I-290B submission did not include a statement of new facts to be provided in the reopened proceeding or a statement of reasons for reconsideration. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to us in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R. §§ 103.5(a)(2) and (3). Accordingly, we could not treat the second appeal as a motion to reopen or a motion to reconsider.

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). When our office rejects an appeal, the appeal does not retain a filing date that can be applied to a later filing. *See* 8 C.F.R. § 103.2(a)(7)(ii)-(iii). 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). The Petitioner's motion to reopen was filed on September 27, 2017, which is 77 days after the service date of the unfavorable decision. Therefore, the motion was correctly found to be untimely filed.

### III. CONCLUSION

The Petitioner has not asserted new facts to be proved in the reopened proceeding, and does not cite binding precedent decisions or other legal authority establishing that we or the director incorrectly applied the pertinent law or agency policy and that the prior decisions were erroneous based on the evidence of record at the time. Therefore, the motions do not satisfy applicable requirements.

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

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

Cite as *Matter of A-B-*, ID# 1258853 (AAO Apr. 12, 2018)