



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

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

MATTER OF D-E-H-S-

DATE: OCT. 9, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a musician, seeks classification 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 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 Texas Service Center denied the petition, concluding 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. The Petitioner then filed a combined motion to reopen and motion to reconsider. The Director dismissed the motion, concluding that the Petitioner did not establish that the denial was incorrect based on the evidence of record at the time of the initial decision. The matter is now before us on appeal.

We will withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

#### I. ANALYSIS

Although the Petitioner's appellate brief primarily addresses the Director's initial denial decision, we emphasize that the Petitioner did not appeal the denial order itself, but rather the Director's subsequent finding that its combined motion did not meet the requirements of a motion to reopen or motion to reconsider. Therefore, the merits of the denial decision, and of the underlying petition, are not before us. The only issue before us is whether the Director properly found that the combined motion did not meet applicable requirements of a motion to reopen or a motion to reconsider. A motion that does not meet applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) 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). 8 C.F.R. § 103.5(a)(3).

Although the Director acknowledged that the Petitioner filed a combined motion to reopen and motion to reconsider, the decision dismissing the motion did not cite to the regulatory requirements for filing a motion to reopen, or otherwise address the motion to reopen or why it was insufficient to meet those requirements. Therefore, we find that the Director did not adjudicate the motion to reopen.

With respect to the Petitioner's motion to reconsider, we note that the Director addressed only one of several legal arguments made in the 26-page brief submitted in support of the motion. Specifically, the Director acknowledged the Petitioner's reliance on *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at 7-8 (E.D.N.Y. Sept. 30, 2011) in support of its claim that his awards qualify as nationally or internationally recognized awards given for excellence in his field of endeavor. Specifically, the Petitioner claimed that the Director incorrectly determined that he was not "officially credited" for a nationally recognized award and pointed to evidence showing that he had received an individual award certificate along with the award statuette awarded to his band at the [redacted] [redacted] in Venezuela. The Director did not acknowledge this claim and instead reached a conclusion that "the Circuit Court's [*sic*] decision apparently supports the AAO decision [*sic*] with regard to plaintiff not being the direct recipient of the awards in his name for his work as lead guitarist."

Further, in its brief on motion, the Petitioner alleged several errors in the Director's application of the regulatory criteria to the facts presented and in the Director's interpretation of the plain language of those criteria. The Director did not address these arguments, and instead summarily concluded that the motion did not "establish that the decision was incorrect based on the evidence of record at the time of the initial decision." An officer must fully explain the reasons for denial in order to allow the petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Therefore, because the Director has not yet addressed the merits of the Petitioner's motion to reopen or fully addressed the merits of the motion to reconsider, the record of proceeding is not ripe for us to consider the Petitioner's arguments in that motion. The Director must at least address the Petitioner's claims and any new facts, and explain why they are deficient to overcome the denial of the petition.

## II. CONCLUSION

As the Director's decision did not address the Petitioner's motion to reopen or sufficiently address the merits of the Petitioner's motion to reconsider, we will remand the matter for entry of a new decision.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.