



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

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

In Re: 5505808

Date: FEB. 12, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an electrical equipment maintenance and electronic communication specialist, seeks classification as an alien of extraordinary ability. *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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had a one-time achievement (a major, internationally recognized award) or met at least three of the required evidentiary criteria. The Petitioner appealed the matter to us, and we summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v).

On motion, the Petitioner submits a brief and additional evidence and asserts that he has demonstrated a one-time achievement and is eligible for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motions to reopen and to reconsider.

## I. LAW

A motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

A motion to reconsider must (1) 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, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

### III. ANALYSIS

As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. 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 our summary dismissal of its appeal. Therefore, the merits of the denial decision, and of the underlying petition, are not before us. Rather, the only issue before us is whether we properly found that the Petitioner's appeal met the applicable requirements for summary dismissal pursuant to 8 C.F.R. § 103.3(a)(1)(v).

In relevant part, the regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that an appeal shall be summarily dismissed "when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." In our decision, we noted that the Petitioner indicated that he would submit a brief and/or additional evidence within 30 calendar days of filing the appeal, and that we had not received this documentation. We further stated that the Petitioner's initial filing did "not contain a statement that specifically identifies an erroneous conclusion of law or statement of fact in the unfavorable decision being appealed."

#### A. Motion to Reopen

As we note above, a motion to reopen is based on documentary evidence of new facts. On motion, the Petitioner includes an appellate brief explaining that he "filed a timely appeal" and acknowledging that he "failed to submit additional documentation" with this appeal because he was still "in the process" of obtaining "documentation to demonstrates [*sic*] his eligibility" for the benefit sought.

He also presents new evidence on motion with regard to the Director's initial denial decision. Specifically he submits a letter from [redacted] of [redacted] confirming his current employment with that entity, as well as an offer of employment from [redacted]. Regarding the matter before us, the Petitioner acknowledges in his appellate brief that he did not submit a brief or additional evidence, one of the reasons we provide in our summary dismissal for that decision. He does not demonstrate how the aforementioned letters address the stated grounds for summary dismissal, and this evidence is not sufficient to demonstrate that we were in error. Accordingly, while we note that the Petitioner submits new evidence, these materials do demonstrate that the Petitioner's appeal identified its legal or factual basis. Therefore we will dismiss this motion.

#### B. Motion to Reconsider

On appeal, the Petitioner indicate that he "seeks to file a motion to reconsider USCIS decision based on legal grounds, and seeks a new determination based on alleged errors of fact or law." However, he does not indicate that our decision to summarily dismiss his appeal was based on an incorrect application of law or policy or show that the decision was incorrect based on the evidence in the record at the time. He therefore has not met the requirements for a motion to reconsider pursuant to 8 C.F.R. § 103.5(a)(3), and we will dismiss this motion accordingly.

### III. CONCLUSION

The Petitioner's motions to reopen and reconsider do not establish that our decision to summarily dismiss his appeal was legally or factually in error.

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

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