



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

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

In Re: 5058500

Date: JAN. 16, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, an event manager for large scale and global events, seeks classification as an individual 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 Texas Service Center denied the petition, concluding that the Petitioner had not satisfied 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 initial regulatory criteria. The Petitioner subsequently filed a combined motion to reopen and reconsider. The Director dismissed the motion concluding that it did not meet the requirements of either a motion to reopen or motion to reconsider. The matter is now before us on appeal.

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 *de novo* review, 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. Rather, the only issue before us is whether the Director properly found that the Petitioner's 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 (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).

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. The Director, while acknowledging that the Petitioner submitted evidence in support of the motion, noted that such evidence “had previously been submitted or was previously available at the time of the decision but was not submitted.” Therefore, the Director determined that the Petitioner “failed to submit new facts.”

The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a “new” fact, nor does it mirror the Board of Immigration Appeals’ (the Board) definition of “new” at 8 C.F.R. § 1003.2(c)(1) (stating that a motion to reopen will not be granted unless the evidence “was not available and could not have been discovered or presented at the former hearing”). Unlike the Board regulation, we do not require the evidence of a “new fact” to have been previously unavailable or undiscoverable. Instead, we interpret “new facts” to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Here, it appears that the Director applied the Board’s definition of “new” to the Petitioner’s motion to reopen.

As a result, the Director’s decision did not sufficiently address the newly submitted facts or evidence or explain why the requirements for a motion to reopen were not met. Therefore, we find that the Director did not properly adjudicate the motion to reopen.

With respect to the motion to reconsider, the Petitioner’s brief alleged several errors in the Director’s application of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) to the facts presented and in the Director’s interpretation of the plain language of those criteria. The decision does not address these arguments, and instead summarily concludes that “the motion to reconsider does not establish that the requirements for filing a motion to reconsider have been met.” 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).

Because the Director has not yet addressed the merits of the Petitioner’s motion to reopen or 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, legal arguments, and any new facts, and explain why they are insufficient to overcome the denial of the petition.

## II. CONCLUSION

As the Director’s decision did not adequately address the merits of the Petitioner’s motion to reopen or 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.