



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

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

In Re: 6081540

Date: MAR. 2, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a dancer and choreographer, 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which she must meet at least three. The Petitioner appealed the matter to us, and we dismissed the appeal.<sup>1</sup> The Petitioner then filed a combined motion to reopen and reconsider, which we denied as untimely filed.<sup>2</sup>

On a second combined motion to reopen and reconsider, the Petitioner contends that its previous motion was submitted timely and that our decision was based on “a legal error misapplying the existing regulations and an abuse of discretion.”

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 combined motion.

## I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as, for instance, submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

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 we based our decision on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of

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<sup>1</sup> *See Matter of E-G-*, ID# 1668798 (AAO October 25, 2018).

<sup>2</sup> *See* ID# 3606848 (AAO March 28, 2019)

proceedings at the time of the decision. A petitioner must support its motion to reconsider with a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. 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.

## II. ANALYSIS

The primary issue in this matter is whether the Petitioner established that she timely filed her previous combined motion to reopen and reconsider.

The record reflects that we issued our prior decision dismissing the Petitioner's appeal on October 25, 2018, and the Petitioner filed her motion on Thursday, November 29, 2018, 35 days after the decision was issued. A motion must be filed within 33 calendar days of the date USCIS served the unfavorable decision by mail. *See* 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). When computing the period of time for filing an appeal or motion USCIS counts every calendar day (including Saturdays, Sundays, and legal holidays) starting the first calendar day after the date USCIS mailed the unfavorable decision. If the *last* day of the filing period falls on a Saturday, Sunday, or a legal holiday, the period to file an appeal runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. *See* 8 C.F.R. § 1.2.<sup>3</sup>

On motion, the Petitioner contends that the previous motion was timely filed. In support, she submits a brief in which she asserts as follows:

**The 30th day of the filing fell on Saturday, November 24, 2018. . . . The next day which was not on Saturday, Sunday or a legal holiday was Monday, November 26, 2018. . . . 8 C.F.R. § 103.8(b) provides for 3 days for to respond by mail. This [motion] must have been received by Thursday, November 29, 2019. AAO confirmed in the Notice of Denial that it was received on November 29, 2019. ACCORDNGLY, THE MOTION TO REOPEN/RECONSIDER WAS SUBMITTED TIMELY WITHIN THE PERIOD PRESCRIBED BY THE REGULATIONS.**

(Emphasis in original).

The last day of the filing period applicable to the Petitioner's motion fell on Tuesday, November 27, 2018. The Petitioner has not cited to any of the aforementioned sources of authority in support of her assertion that we should not count the Saturday and Sunday preceding the last day of the relevant filing period. The Petitioner, therefore, does not specifically identify the nature of our alleged legal error.

As the Petitioner has not provided evidence to support her claims, nor alleged an incorrect application of law or policy in our prior decision, the motion does not meet the requirements of a motion to reopen or a motion to reconsider.

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<sup>3</sup> The Petitioner cites to a similar provision at 8 C.F.R. § 1001.1(h), applicable to appeals that fall under the jurisdiction of the Board of Immigration Appeals.

### III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration.

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

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