



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

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

In Re: 8258074

Date: MAY 27, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a journalist and author of poetry and literature, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not provide evidence of a one-time achievement or, in the alternative, evidence that he meets at least three of the ten initial evidentiary criteria for this classification. We summarily dismissed the Petitioner's subsequent appeal because it did not include a statement in support of the appeal that specifically identified an erroneous conclusion of law or fact in the Director's decision. Although the Petitioner indicated that he would submit a brief and/or additional evidence to our office within 30 days of filing the appeal, the record did not include a supplemental brief at the time of adjudication, more than four months after the appeal was filed.

The matter is now before us on a combined motion to reopen and motion to reconsider. The Petitioner submits a brief and additional evidence addressing the Director's decision and the merits of his case, as well as evidence to support his claim that he timely submitted "a brief or evidence" to our office within 30 days of filing his 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 review, we will deny the combined motion to reopen and motion to reconsider.

## I. LAW

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen must state new facts and be supported by 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 proceedings at the time of the decision. We may

grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

## II. ANALYSIS

The issue in this matter is whether the Petitioner has either submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal and/or established that our decision to summarily dismiss his appeal was based on an incorrect application of USCIS law or policy.

The regulations provide that an officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). At the time he filed his appeal on April 25, 2019, the Petitioner did not submit a statement identifying any erroneous conclusion of law or statement of fact as a basis for the appeal, as instructed on the Form I-290B, Notice of Appeal or Motion. The Petitioner also submitted no brief or evidence with Form I-290B but stated that he would submit those materials to our office within 30 days. When we reviewed the record of proceeding several months later, it did not include any supplement to the appeal. As a result, we summarily dismissed the appeal, because the appeal, as presented to us, did not identify any erroneous conclusion of law or statement of fact in the Director's denial of the petition as a basis for the appeal.

On motion, the Petitioner states that he timely mailed a “brief/affidavit and additional evidence” to our office by Federal Express (FedEx) on May 22, 2009, using its overnight service. However, his submission on motion does not include a copy of the “brief/affidavit and additional evidence” that he claims to have mailed.

The Petitioner has provided an image of a FedEx mailing label, addressed to our office, for a package shipped by ‘[REDACTED]’ in [REDACTED] New York on May 22, 2019. He also provides a FedEx delivery confirmation with a matching tracking number, showing that the package was delivered to our office on May 23, 2019. We note, however, that there is no information on the mailing label linking the package to the Petitioner, as he is not identified as the sender. He has not provided, for example, a receipt indicating that he paid the named shipper a fee for mailing the package.

### A. Motion to Reopen

We will dismiss the motion to reopen as the new evidence does not overcome our basis for dismissing the appeal. The Petitioner submits an inconclusive FedEx shipping and delivery confirmation without providing evidence of the documents that he purportedly had delivered to our office. We cannot reopen the appeal to consider a timely-filed brief if we do not have that brief or a copy of the brief.

Without evidence that the Petitioner submitted a brief or other substantive statement in which he specifically identified an erroneous conclusion of law or statement of fact as a basis for the appeal, he has not established with the current motion that he was entitled to a decision on the merits of his case on appeal.

## B. Motion to Reconsider

We will also dismiss the motion to reconsider, because the Petitioner has not shown that the summary dismissal was incorrect based on the evidence of record at the time of the initial decision. The evidence of record, at that time, did not include any supplement to the appeal and still does not include any supplemental evidence submitted in support of the appeal. Given the record before us on appeal, the summary dismissal decision was consistent with USCIS regulations and policy.

We will not consider the newly submitted motion brief discussing the merits of the case absent evidence that we summarily dismissed the appeal in error. The Petitioner has not provided such evidence or shown that the matter should be reopened or reconsidered. Accordingly, the combined motion will be dismissed.

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

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