



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

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

In Re: 16716213

Date: APR. 29, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, a master mariner and specialist surveyor, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner: (1) had satisfied at least three of ten initial evidentiary criteria; (2) seeks to continue working in the area of claimed extraordinary ability; and (3) would substantially benefit prospectively the United States, as required. The Petitioner filed two combined motions to reopen and reconsider. On both occasions, the Director granted the motions, withdrew the prior decision, and issued a new denial notice. We dismissed the Petitioner's subsequent appeal, finding that the Petitioner met only one of the ten initial evidentiary criteria, performing in a leading or critical role for distinguished organizations or establishments under 8 C.F.R. § 204.5(h)(3)(viii).

The matter is now before us on a combined motion to reconsider and motion to reopen. 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 both motions.

The motion to reconsider was not accompanied by a statement regarding the basis for the motion. Although the Petitioner acknowledges our dismissal of his appeal in a letter accompanying the motion, the letter does not contain any reference to the specific findings made in our decision. In addition, the Petitioner's letter did not provide any new facts, and the motion to reopen was not accompanied by any new evidence.

A motion to reconsider is based on an *incorrect application of law or policy*, and a motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 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 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).

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part: “A motion that does not meet applicable requirements shall be dismissed.” The instant motion consists of the above-referenced letter from the Petitioner. There is no reference made to the findings made in our decision and the specific deficiencies remarked upon therein, no new facts provided to support a motion to reopen, and no specific reasons stated for reconsideration.¹ Accordingly, the motion will be dismissed for failing to meet the applicable requirements.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.

¹ The Petitioner also did not include the required “statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding.” 8 C.F.R. § 103.5(a)(1)(iii)(C). Therefore, because the instant motion does not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.