



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

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

In Re: 17811592

Motion on Administrative Appeals Office Decision

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

The Petitioner, a stage actor, 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 satisfied at least three of ten initial evidentiary criteria, as required. The Petitioner subsequently filed an appeal, which we dismissed. The matter is now before us on an untimely motion to reopen and a motion to reconsider.

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

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In addition, 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen to instances where the Petitioner has shown "proper cause" for that action. To merit reopening, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

The Petitioner, through counsel, acknowledges that her motion is untimely. Ordinarily, a petitioner must file a motion to reopen or reconsider no later than 33 days after the date of the decision for which that petitioner seeks reconsideration.¹ Under special rules that USCIS implemented during the current COVID-19 pandemic, a petitioner may generally file a motion up to 63 days after the issuance of a mailed decision.² The Petitioner's filing arrived 77 days after we mailed our dismissal of the Petitioner's appeal.

With respect to a motion to reopen, "failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." *See* 8 C.F.R. § 103.5(a)(1)(i). For the reasons discussed below, we conclude that the Petitioner filed her motion to reopen late and has not demonstrated that the untimely filing was reasonable and beyond her control.

In a statement accompanying the late motion, counsel for the Petitioner states:

In March 2020, USCIS began extending flexibilities for responding to certain motions and decisions as a result of the ongoing COVID-19 pandemic allowing for an ***additional sixty (60) calendar days after the response due date***. See Exhibit BB for a copy of the USCIS notice released on September 11, 2020 regarding the extension for responding to agency requests for notices issued between March 1, 2020 and January 1, 2021.

The Petitioner submitted a copy of the USCIS alert outlining the extended COVID-19 flexibilities, which clearly states that USCIS will consider a Form I-290B received up to 60 days from the date of the decision before we take action. The Petitioner, however, argues that the notice is misleading because it conflates the period for responding to a Form I-290B with the response period for other agency notices and requests, such as requests for evidence, which are afforded a longer response period. Consequently, the Petitioner asks us to excuse the motion's untimely filing.

As noted above, USCIS has extended filing deadlines for appeals and motions filed on Form I-290B to account for anticipated delays associated with the COVID-19 pandemic, and the USCIS alert outlining the response due date specifically states, in a sentence distinct from those discussing the response period for other agency requests and notices, that a Form I-290B must be filed within 60 days of the date the decision was issued.

It is the Petitioner's burden to establish that the late filing was reasonable and beyond her control. The Petitioner's excuse for the untimely filing of the motion does not demonstrate that she has met this burden, and we will not exercise our discretion to excuse the late filing of his motion to reopen. While we acknowledge the Petitioner's assertion that the agency guidance on COVID-19 flexibilities was confusing, the deadline for filing an appeal or motion on Form I-290B under the extended COVID-19

¹ *See* 8 C.F.R. § 103.5(a)(1)(i) and 103.8(b).

² USCIS Alert, "USCIS Extends Flexibility for Responding to Agency Requests," (Jun. 24, 2021), <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-4> (last visited Sep. 9, 2021); *see also* 8 C.F.R. § 103.8(b) (adding three days to filing deadlines if USCIS serves decisions or notices by mail).

flexibilities is specifically and clearly outlined in the USCIS alert referenced by the Petitioner, and we are not persuaded by the Petitioner's assertions to the contrary.

The motion to reopen will be dismissed as untimely filed, pursuant to 8 C.F.R. § 103.5(a)(1)(i). Because there is no comparable authority extended to an untimely filed motion to reconsider, the Petitioner's untimely motion to reconsider will also be dismissed. *See id.*

III. CONCLUSION

The motion to reopen and motion to reconsider was filed untimely. Thus, the motions do not meet applicable requirements. We must therefore dismiss them.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.