



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

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

In Re: 28586944

Date: SEPT. 26, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an actor, 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, although the Petitioner established that she satisfied the initial evidentiary requirements, she did not establish, as required, that she has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. We dismissed a subsequent appeal. The Petitioner then filed a motion to reconsider, which we dismissed as untimely. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

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 our prior 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 official with jurisdiction over a motion may, for proper cause shown, reopen the proceeding or reconsider the prior decision. 8 C.F.R. § 103.5(a)(1)(i). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). Therefore, we begin by discussing the circumstances underlying that decision.

We dismissed the Petitioner's appeal on February 16, 2022. In that decision, we discussed the merits of the petition. Upon dismissal of the appeal, the Petitioner had 33 days to file a motion. *See* 8 C.F.R.

§ 103.5(a)(1)(i). COVID-19 flexibilities then in place added 60 days to the allotted time. *See* “USCIS Extends Flexibility for Responding to Agency Requests,” <https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1>. As a result, a timely motion had to be filed no later than May 20, 2022.

On May 10, 2022, the Petitioner attempted to file the combined motions, but U.S. Citizenship and Immigration Services (USCIS) rejected the filing as deficient, stating it did not meet filing requirements. The Petitioner then re-filed the motion on June 9, 2022, after the filing deadline had elapsed.

We dismissed the motion on February 15, 2023, stating: “The motion to reconsider was filed untimely. Thus, the motion does not meet applicable requirements.” The regulation at 8 C.F.R. § 103.5(a)(4) requires the dismissal of a motion that does not meet applicable requirements.

On motion from that decision, the Petitioner contests the dismissal of the earlier motion, stating that she filed the motion within the time permitted. The Petitioner submits copies of mailing records and asserts that USCIS should have accepted the May 2022 filing. The record, however, does not show that the Petitioner properly filed the motion in May 2022.

The instructions to Form I-290B, Notice of Appeal or Motion, state on page 7:

**Where To File?**

Use the chart at [www.uscis.gov/i-290b-addresses](http://www.uscis.gov/i-290b-addresses) to determine the correct filing address for your appeal or motion. Form I-290B is not considered received by USCIS unless you file it at the proper location.

....

**DO NOT FILE FORM I-290B DIRECTLY WITH THE AAO.**

The filing address chart mentioned above indicates that, to file a motion on an AAO decision, filers should send Form I-290B to “[t]he USCIS office that made the original unfavorable decision.” The chart includes an illustrative example:

**Example:** The USCIS Miami Field Office denied your Form I-601. You filed an appeal with the AAO, but AAO dismisses the appeal. You want to file a motion asking that AAO reconsider its dismissal. You should file your motion with the Chicago Lockbox because the Miami Field Office issued the original denial on your case.

The Petitioner’s motion includes a printout of the filing address instructions quoted directly above.

In this case, the Texas Service Center issued the original unfavorable decision by denying the petition. The chart identified above specified that filings disputing Service Center decisions should be sent to the “USCIS Phoenix Lockbox.”

On motion, the Petitioner states that she followed these instructions, but evidence submitted on motion does not support that claim.

The Petitioner states: “we filed I-290B on May 10, 2022 to AAO and a copy also submitted to decision location – Texas Service Center.” The May 2022 cover letter and mailing receipts submitted on motion are consistent with this statement. Those documents appear to indicate that, instead of sending the complete, original May 2022 filing to the Phoenix Lockbox in accordance with instructions, the Petitioner attempted to file the motion directly with the AAO, with a copy sent, without fee, directly to the Texas Service Center. The May 2022 cover letter also referred to a courtesy copy sent to the Phoenix Lockbox, but the letter did not indicate that the Phoenix Lockbox received a complete filing with both a brief and the required fee.

Correspondence submitted with the latest motion indicates that the Phoenix Lockbox received the May 2022 motion on May 19, 2022 and rejected it on May 31, 2022, stating the motion lacked necessary information and therefore was not complete. The Form I-290B that the Petitioner executed in May 2022 did not include any information about the basis for the motion, and therefore if it were filed without either the brief or the fee then it would not have constituted a complete, properly executed motion. The available evidence does not establish that the May 2022 mailing to the Phoenix Lockbox included both the brief and the fee.

The AAO does not directly accept motion filings, and therefore the Form I-290B instructions specifically direct applicants and petitioners not to “file Form I-290B directly with the AAO.”

By the time the Petitioner refiled the complete motion with the Phoenix Lockbox in June 2022, the filing deadline had passed.

Every form, benefit request, or other document must be submitted and executed in accordance with the form instructions. 8 C.F.R. § 103.2(a)(1). Here, the Form I-290B instructs petitioners not to send motions directly to the AAO, but the Petitioner did so anyway. The Petitioner cites this direct mailing to the AAO as evidence of timely filing, but it serves to indicate that the Petitioner did not timely and properly file the May 2022 motion in accordance with the form instructions to retain a filing date.

The postal documentation submitted on motion constitutes new evidence relating to the mailing and delivery of the prior motion, but the new evidence does not establish that we erred in dismissing the first motion as untimely. Rather, it confirms that the May 2022 motion was not properly filed. Therefore, the newly submitted evidence does not establish proper cause to reopen the proceeding.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. The Petitioner has not met her burden of proof to establish that she made any timely submission that complied with applicable policy and regulations. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

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

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