



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

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

In Re: 31223097

Date: MAY 21, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks to classify the Beneficiary 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 the Petitioner did not establish that the Beneficiary satisfied at least three of the initial evidentiary criteria. We summarily dismissed the Petitioner's appeal. 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy the aforementioned requirements and demonstrate eligibility for the requested benefit.

In our November 2023 summary dismissal decision, we stated that the Petitioner's appeal did not identify specifically any erroneous conclusion of law or statement of fact in the Director's decision. Further, while the Petitioner indicated that a brief and/or additional evidence would be submitted to the AAO within 30 calendar days of filing the appeal, the record did not show that the AAO received those materials within that period. Instead, the Petitioner's motion indicates that its supplemental appeal brief was incorrectly sent to Tempe, Arizona rather than the AAO. Any brief and/or evidence submitted after filing the Form I-290B, Notice of Appeal or Motion, must be sent directly to the AAO as required by the regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the filing instructions for the Form I-

290B. Because the AAO did not receive the supplemental brief and the Petitioner's appellate submission did not identify specifically any erroneous conclusion of law or statement of fact, we summarily dismissed the appeal. *See* 8 C.F.R. § 103.3(a)(1)(v).

On motion, the Petitioner presents a copy of its August 2023 supplemental brief and a FedEx tracking receipt showing that the brief was incorrectly sent to Tempe, Arizona rather than the AAO.¹ The Petitioner asks that we consider the arguments presented in its legal brief challenging the Director's June 2023 decision.

The only decision properly before us on motion is our November 2023 appellate decision, and not the Director's June 2023 denial of the petition. *See* 8 C.F.R. § 103.5(a)(1)(i), (ii), requiring that motions pertain to "the prior decision" or "the latest decision" which in this case is our November 2023 decision. The Petitioner has not demonstrated that our summary dismissal decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. In addition, the Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our appellate decision.

The Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings, nor has it shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reopening or reconsideration of our decision. Accordingly, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

¹ The tracking receipt shows a delivery date of August 3, 2023.