



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

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

In Re: 8187359

Date: JUNE 11, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a theater company, seeks classification of the Beneficiary as an individual of extraordinary ability in the arts. *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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had shown that the Beneficiary met only one of the ten initial evidentiary criteria, of which she must meet at least three. We dismissed the Petitioner's subsequent appeal, concluding that although it established that the Beneficiary met three of the initial evidentiary criteria, it had not established the Beneficiary's eligibility in the final merits analysis. We dismissed a subsequent motion to reconsider as untimely filed. The matter is now before us on a second motion to reconsider. Upon review we will dismiss the motion.

## I. LAW

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. The requirements of a motion to reconsider are located at 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.<sup>1</sup>

## II. ANALYSIS

Our dismissal of the Petitioner's previous motion to reconsider was based on the fact that it was filed 63 days after the service of our decision dismissing the Petitioner's appeal, which did not comply with the regulatory requirement that a motion be filed within 33 calendar days of the date our unfavorable

---

<sup>1</sup> The Petitioner 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

decision was mailed. *See* 8 C.F.R. § 103.5(a)(1)(i); 103.8(b). The Petitioner was specifically advised of the 33-day filing period for motions on the cover page of our decision dismissing the Petitioner's appeal.

In its current motion to reconsider the Petitioner submits copies of the brief and supporting documents that were late filed with its previous motion to reconsider and therefore not considered in our decision dismissing the motion. The Petitioner asserts that these materials were not late filed in its previous motion because they were received by U.S. Citizenship and Immigration Services (USCIS) on Monday, April 29, 2019, which was the last day of the filing period for our dismissal decision dated March 26, 2019.<sup>2</sup> While the Petitioner is correct that its Form I-290B, Notice of Appeal or Motion, was originally received by USCIS on April 29, 2019, it was rejected and returned to the Petitioner along with the brief and all supporting materials because the check the Petitioner submitted with the Form I-290B was dated April 26, 2018. A rejected benefit request does not retain a filing date. *See* 8 C.F.R. § 103.2(a)(7)(iii). By the time the Petitioner resubmitted a check and the Form I-290B with supporting documentation, which were received by USCIS and properly filed on May 28, 2019, the 33-day filing period had expired.

For the reasons discussed above, the Petitioner has not demonstrated that our decision dismissing the previous motion on the ground that it was late filed was based on an incorrect application of law or policy, as required by 8 C.F.R. § 103.5(a)(3). Accordingly, the Petitioner did not meet the requirements for a motion to reconsider.

### III. CONCLUSION

The Petitioner has not shown that our previous decision was incorrect based on the record before us. 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. Here, that burden has not been met.

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

---

<sup>2</sup> The last day of the filing period fell on Sunday, April 28, 2019, therefore, the period to file a motion ran until the end of Monday, April 29, 2019. 8 C.F.R. § 1.2.