



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

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

In Re: 17537282

Date: JUL. 09, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, an athlete competing in weightlifting, 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 Nebraska Service Center denied the petition and affirmed that decision on a subsequent combined motion to reopen and reconsider, concluding that the record did not establish, as required, that the Petitioner had a qualifying one-time achievement or, in the alternative, that he satisfied at least three of the ten initial evidentiary criteria for this classification at 8 C.F.R. 204.5(h)(3)(i)-(x). The Petitioner subsequently filed an appeal, which we dismissed. The matter is now before us on a motion to reopen.

In these proceedings, the petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion to reopen.

#### I. MOTION REQUIREMENTS

A motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). 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 record reflects that we dismissed the Petitioner's appeal on July 6, 2020 and mailed the decision to the Petitioner and former counsel. The Petitioner filed the instant motion to reopen on February 8, 2021, 217 days after we issued the unfavorable decision.

The applicable regulations state that a motion on an unfavorable decision must be filed within 33 days of the date USCIS mails the decision. *See* 8 C.F.R. §§ 103.5(a)(1), 103.8(b). During the coronavirus (COVID-19) pandemic, USCIS issued guidance that Form I-290B, Notice of Appeal or Motion, would be accepted if filed within 60 days of the unfavorable decision. Based on this extended deadline, the Petitioner's motion to reopen would have been deemed timely filed if received by USCIS on or before September 8, 2020.

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 his motion to reopen late and has not demonstrated that the untimely filing was reasonable and beyond his control.

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

I . . . apologize and request for excuse for filing motion to reopen late because of unforeseen reasons. I could not file motion to reopen for Administrative Appeals Office decision on time because of Covid-19. Due to Covid-19 many law offices were closed in East Coast also due to Quarantine regulations in Uzbekistan. Please accept the excuse for the late 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. The Petitioner's brief explanation is lacking detail regarding the specific reasons for the lengthy delay in filing this motion and is not accompanied by any supporting documentation. This statement alone does not demonstrate why he reasonably required seven months to file his motion, which is well beyond the extended deadline provided by USCIS to provide additional flexibility during the pandemic.

It is the Petitioner's burden to establish that the late filing was reasonable and beyond his control. Based on the limited explanation provided, the Petitioner has not met this burden, and we will not exercise our discretion to excuse the late filing of his motion to reopen. The motion to reopen will be dismissed as untimely filed, pursuant to 8 C.F.R. § 103.5(a)(1)(i).

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