



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

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

In Re: 20612244

Date: AUG. 30, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 in 2019. We dismissed the Petitioner's appeal in March 2020, concluding that the evidence did not confirm his receipt of a one-time achievement (that is, a major, internationally recognized award), and did not show that he met at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, he did not establish eligibility to be classified as an individual of extraordinary ability.

In May 2020, the Petitioner filed a Form I-290B, Notice of Appeal or Motion, indicating on Part 2, that he was filing "an appeal to the AAO [Administrative Appeals Office]" and that he would "submit [his] brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal." He also indicated on Part 7 of the Form I-290B that he was "filing a motion to reopen & motion to reconsider," and requesting additional time to file his statement and documents in support of his combined motions (first motion filing). In June 2020, the Petitioner submitted a statement and additional evidence in support of his first motion filing.<sup>1</sup> In October 2020, we dismissed his first motion filing, explaining that the motion filing did not satisfy the regulatory requirements under 8 C.F.R. § 103.5(a)(2) and (3). *See also* 8 C.F.R. § 103.5(a)(4). We explained that when the Petitioner filed his first motion filing in May 2020, he did "not state new facts that are supported by documentary

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<sup>1</sup> In September 2020, the Petitioner submitted a statement, clarifying that he was filing combined motions, not an appeal, in May 2020.

evidence” and “did not submit a statement or brief with [the] motion to reconsider referencing a pertinent legal authority.”

In November 2020, the Petitioner submitted another motion filing, combined motions to reconsider and reopen the proceeding (second motion filing). In September 2021, we dismissed his second motion filing, explaining that we had dismissed his first motion filing for the following reasons:

[T]he regulations regarding the submission of a motion to reopen or a motion to reconsider do not provide an allowance for additional time to submit a statement, brief or additional evidence. *See* 8 C.F.R. § 103.5(a)(1)(iii), *see also Instructions for Notice of Appeal or Motion*, Form I-290B at 6 (rev. 5/17/2018). The second motion [filing] does not provide evidence that the brief [and/or additional evidence] was submitted by the Petitioner together with the Form I-290B of the first motion [filing].

As the Petitioner did not meet the requirements of a motion to reopen or a motion to reconsider, we will dismiss the [second] motion [filing].”

The matter is now before us on a third motion filing, combined motions to reconsider and reopen the proceeding. 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; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).<sup>2</sup> Upon review, we will dismiss the Petitioner’s third motion filing.

## I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and 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. In addition, by regulation, the scope of a motion is limited to “the prior decision.” 8 C.F.R. § 103.5(a)(1)(i).

## II. ANALYSIS

As noted, the scope of a motion is limited to “the prior decision.” 8 C.F.R. § 103.5(a)(1)(i). This means that the scope of the instant motion filing (third motion filing) is limited to our September 2021 decision dismissing the Petitioner’s second motion filing. As such, the issues before us are, as relating to our September 2021 motion decision: (1) whether the Petitioner has “state[d] the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence”;

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<sup>2</sup> If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is “more likely than not” or “probably” true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

and (2) whether he has shown that our September 2021 decision “was based on an incorrect application of law or [U.S. Citizenship and Immigration Services (USCIS)] policy.” 8 C.F.R. § 103.5(a)(2), (3).

On motion, the Petitioner “reiterates that he submitted his executed statement/brief including his supplemental evidentiary documents to support his motion on May 2020 via US Priority mail.” As discussed, the Petitioner submitted his first motion filing in May 2020, without including a brief, a statement or additional supporting evidence. After he submitted his Form I-290B initiating his first motion filing, he provided a statement and additional evidence. We explained in our September 2021 decision denying his second motion filing that, under the regulations, and unlike an appeal, a petitioner must submit a statement and/or additional evidence in support of a motion at the same time he or she files the Form I-290B. *See* 8 C.F.R. § 103.5(a)(1)(iii), *see also Instructions for Notice of Appeal or Motion*, Form I-290B at 6 (rev. 12/02/19) (specifying that “[f]or appeals,” not motions, a petitioner “must file any brief and/or additional evidence within 30 calendar days of filing Form I-290B”).<sup>3</sup> For motions, a petitioner cannot submit such materials after filing his or her Form I-290B, as the Petitioner had done in this case.

We will dismiss the Petitioner’s instant motion to reconsider the matter (third motion filing), because he has not shown that our September 2021 decision dismissing his second motion filing was based on an incorrect application of law or USCIS policy, or that our decision was incorrect based on the evidence then before us. *See* 8 C.F.R. § 103.5(a)(3). Specifically, the Petitioner has not shown that he may file supporting documents for a motion after his filing of a Form I-290B that initiated the motion. In addition, he has not shown that he filed his supporting documentations at the same time he filed his Form I-290B in May 2020.

Similarly, we will dismiss the Petitioner’s instant motion to reopen the proceeding (third motion filing), because the materials he offers on motion relate to the bases under which the Director denied the petition in 2019 and the bases under which we dismissed his appeal in March 2020. The motion materials, however, do not concern the reasons specified in our September 2021 motion decision, in which we dismissed his second motion filing. *See* 8 C.F.R. § 103.5(a)(2); *see also* 8 C.F.R. § 103.5(a)(1)(i) (noting that the scope of a motion is limited to “the prior decision”).

### III. CONCLUSION

We will dismiss the Petitioner’s motion to reconsider the matter because his third motion filing does not establish that we erred in our September 2021 motion decision. *See* 8 C.F.R. § 103.5(a)(3). In addition, we will dismiss his motion to reopen the proceeding because he has not provided documentary evidence of new facts as relating to our September 2021 motion decision. *See* 8 C.F.R. § 103.5(a)(2).

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

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

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<sup>3</sup> In his statement in support of the instant (third) motion filing, the Petitioner appears to believe that his May 2020 motion filing (first motion filing) was an appeal and cites regulations and AAO Practice Manual sections pertaining to appeals. His May 2020 filing was in fact a motion filing, not an appeal. He filed an appeal in 2019, which we dismissed on its merits in March 2020.