U.S. Citizenship and Immigration Services

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

In Re: 22105561

Date: SEPT. 1, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a former professor at [redacted], 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 in 2012 and dismissed two subsequent motions in 2012 and 2013, respectively, concluding that the Petitioner had not satisfied the initial evidence requirements for this immigrant visa classification. In 2014, we dismissed the Petitioner's appeal of the Director's 2013 decision. We have since dismissed twelve motions filed by the Petitioner between 2014 and 2021. Most recently, we dismissed his September 2021 (twelfth) motion to reconsider as untimely on February 22, 2022. The matter is now before us on a motion to reopen and reconsider our decision.

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. Upon review, we will dismiss the motion to reopen and reconsider.

## I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In addition, a motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 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.

Under 8 C.F.R. § 103.5(a)(1) and 8 C.F.R. § 103.8(b), in general, motions must be filed within 33 days of the adverse decision. In response to the coronavirus (COVID-19) pandemic, however, USCIS extended the deadline for filing a Form I-290B, Notice of Appeal or Motion. A petitioner may file a

Form I-290B within 60 calendar days from the date of the adverse decision, if USCIS issued the decision between March 1, 2020, and January 15, 2022.[1] As relating to a motion to reopen the proceeding, the filing deadline may be excused in the discretion of USCIS if a petitioner demonstrates that the delay was reasonable and was beyond their control. 8 C.F.R. § 103.5(a)(1).

## II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles). Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

## III. ANALYSIS

In our February 2022 decision, we dismissed the Petitioner's twelfth motion as untimely filed. We explained that a motion on an unfavorable decision must be filed within 33 calendar days of the date we mailed the decision. 8 C.F.R. § 103.5(a)(1), 103.8(b). However, because of the COVID-19 pandemic, we noted that USCIS would consider a Form I-290B filed within 60 calendar days of an unfavorable decision. Our decision further stated: "On July 9, 2021, we mailed the unfavorable decision to you. Your Form I-290B was received at the designated filing location on September 15, 2021, which is 68 days after the decision."

### A. Motion to Reopen

The Petitioner contends that his twelfth motion "was sent on time" and that the filing delay was reasonable and beyond his control. He presents a U.S. Postal Service receipt indicating that he mailed his Form I-290B and supporting documents on August 3, 2021.[2] This evidence is sufficient to corroborate the Petitioner's claim that he mailed his Form I-290B more than one month in advance of the filing deadline. There is no indication that the Petitioner's actions contributed to the unusual delay that occurred from after the date of mailing until the Form I-290B's receipt at the designated filing location on September 15, 2021. Because the record shows that the filing delay was reasonable and beyond his control, we will exercise our discretion to excuse the late filing of his twelfth motion. *See*

[1] *USCIS Extends Flexibility for Responding to Agency Requests*, available at https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests (accessed on August 31, 2022).

[2] The record also includes a copy of the envelope in which his Form I-290B submission was mailed. The envelope was correctly addressed to the designated filing location and shows a postmark date of August 3, 2021.

8 C.F.R. § 103.5(a)(1). Accordingly, we will address the merits of his untimely (September 2021) twelfth motion in this proceeding.

The present motion and his twelfth motion, however, do not offer new facts or evidence indicating that the Petitioner has received a major, internationally recognized award, or that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). He therefore has not overcome our prior determination on these issues.

B. Motion to Reconsider

With respect to the merits of his arguments in support of both the present motion and the twelfth motion, the Petitioner lists documents previously considered in earlier proceedings and contends that he meets seven of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner's conclusory statements that he satisfies seven regulatory criteria and is otherwise qualified for the requested classification, and his repetition of arguments previously made in support of his appeal and prior motions, do not meet the requirements of a motion to reconsider.[3] In addition, while the Petitioner states that he "has 7 (seven) university degrees," he has not shown that his academic degrees fulfill any specific criterion at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner's arguments on motion do not demonstrate that we erred in concluding that he had not established his eligibility as an individual of extraordinary ability under section 203(b)(1)(A) of Act. In addition, the Petitioner has not shown that our determination was based on an incorrect application of law, regulation, or USCIS policy.

## IV. CONCLUSION

The Petitioner has not demonstrated that we erred as a matter of law or USCIS policy, nor has he established new facts relevant to our decision that would warrant reopening of the proceedings. Consequently, we have no basis for reopening or reconsideration. The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

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

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

[3] For instance, the Petitioner points to his receipt of an [redacted]' in 2005, but he has not shown that this award constitutes a one-time achievement consistent with 8 C.F.R. § 204.5(h)(3), or evidence of a nationally or internationally recognized award consistent with 8 C.F.R. § 204.5(h)(3)(i). In our February 12, 2020 decision dismissing the Petitioner's tenth motion, we noted that we had previously explained that the record did not demonstrate that the [redacted]' the Petitioner received enjoyed national or international recognition in his field. Further, we emphasized that, in his previous motion, the Petitioner did not address our determination that although he claimed to have received an international [redacted]' in 2005, the record did not indicate that the international edition of the award existed prior to 2010.