U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43643801

Date: JUL. 22, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, an integration architect, seeks classification as an alien 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.

U.S. Citizenship and Immigration Services (USCIS) denied the petition, concluding the Petitioner did not establish his receipt of a major internationally recognized award or demonstrate, in the alternative, that he satisfied at least three of the ten initial evidentiary criteria for this classification. We dismissed the Petitioner's appeal of USCIS' decision and have dismissed four subsequent combined motions to reopen and reconsider. The matter is now before us on a combined motion 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 motion.

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). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). Motions that do not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

Further, the scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence and stated reasons for reconsideration to the extent that they pertain to our latest decision.

On April 16, 2026, we dismissed the Petitioner's fourth combined motion to reopen and reconsider, concluding that it was untimely filed. An affected party is required to file a motion on an unfavorable decision within 33 calendar days of the date the decision was mailed. 8 C.F.R. §§ 103.5(a)(1), 103.8(b). We observed that our prior decision was mailed to the Petitioner on December 10, 2025,

and that his Form I-290B, Notice of Appeal or Motion, was received at the designated filing location on February 13, 2026, 65 days after we mailed the decision.

On motion to reconsider, the Petitioner claims that his prior motion included a cover letter explaining the reason for the untimely filing, accompanied by supporting evidence sufficient to demonstrate that the delayed filing was attributable to USCIS error. He maintains that we erred by summarily dismissing his motion as untimely without acknowledging his claims and evidence, contending that our "[f]ailure to address a properly raised legal argument is itself a basis for reconsideration."

Failure to file a motion to reopen within the 33-day period allowed by regulation may be excused in USCIS' discretion 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). However, contrary to the Petitioner's claims, the record shows that his fourth motion did not include a brief or cover letter with an explanation for the untimely filing, nor was it accompanied by supporting evidence. The motion included a Form G-28, a Form I-290B, and a Form G-1650, Authorization for ACH Transactions. The Petitioner has not established that we failed to address a legal argument in our prior decision, or that we incorrectly applied the law or USCIS policy by dismissing the fourth motion as untimely filed, based on the evidence in the record at the time of our April 2026 decision. Accordingly, we will dismiss the motion to reconsider.

In support of his motion to reopen, the Petitioner submits new evidence showing that his prior Form I-290B was timely submitted to the designated USCIS filing location on January 7, 2026, but rejected based on a determination that the submission did not include all required filing fees.[1] The Petitioner claims that this original submission included a new Form I-290B, signed by him on January 5, 2026, and an attached exhibit that included a copy of a previously filed Form I-290B. He emphasizes that USCIS issued two rejection notices, with two separate receipt numbers, on January 25, 2026, thus suggesting that during intake, it erroneously deemed the older Form I-290B to be a separate, new filing requiring a filing fee. The Petitioner requests that we exercise our discretion to excuse the untimely filing of the fourth motion and consider that motion on its merits. He claims that the delay in the filing was due to USCIS error and was outside his control. *See* 8 C.F.R. § 103.5(a)(1)(i).

While the Petitioner has now provided an explanation for the untimely filing of his fourth motion, the newly submitted evidence does not establish that USCIS erred by rejecting the Form I-290B it received on January 7, 2026. Notably, the Petitioner has not submitted a complete copy of that original submission or other evidence to corroborate his claim that his Form I-290B, when filed, was accompanied by the correct payment. Without such evidence, the Petitioner has not established that USCIS erroneously rejected the motion based on his failure to submit the correct fee. The Petitioner has therefore not shown proper cause for reopening and the motion to reopen will be dismissed.[2]

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[1] A benefit request which is rejected will not retain a filing date. 8 C.F.R. § 103.2(a)(7)(ii).

[2] We note that even if the Petitioner had timely filed his fourth motion, we would have dismissed it on its merits because it did not show proper cause to reopen or reconsider our decision dated December 10, 2025. In that decision, we dismissed the Petitioner's third combined motion to reopen and reconsider as untimely filed. We observed that we mailed our unfavorable decision to the Petitioner on August 20, 2025, and that his Form I-290B was received at the designated filing location on September 24, 2025, 35 days after we mailed the decision. The Petitioner was required to file the third motion for receipt by USCIS on or before Monday, September 22, 2025. *See* 8 C.F.R. §§ 103.5(a)(1), (2). The Petitioner asserted

Finally, we acknowledge the Petitioner's submission of new evidence and legal arguments relating to his underlying Form I-140, Immigrant Petition for Alien Workers, and his eligibility for classification for an alien of extraordinary ability under section 203(b)(1)(A) of the Act. He states that the new evidence addresses evidentiary deficiencies identified in USCIS' denial dated July 22, 2024, and in our subsequent dismissals of his appeal and earlier motions, noting that the new evidence "cures those concerns."

However, the scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the Petitioner's fourth combined motion. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion and we have no basis to reopen our prior decision. We will not grant the Petitioner's request for sua sponte reopening or otherwise re-adjudicate the petition anew. Therefore, the underlying petition remains denied.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, he has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.

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on motion that he entrusted an overnight courier to deliver his motion to USCIS on September 23, 2025, and claimed the delivery was delayed by one day through no fault of his own. However, the record showed that he mailed the decision to USCIS on September 22, 2025, the day same day it was due, and therefore he did not file it within the required timeframe. USCIS will consider a benefit request received and will record the receipt date as of the actual date of receipt the designated filing location. *See* 8 C.F.R. § 103.2(a)(7)(i).