U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-A-

DATE: JUNE 11, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a professional swimmer, seeks classification as an individual of extraordinary ability in athletics. *See* Immigration and Nationality 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 and we dismissed the subsequent appeal. The matter is now before us on a combined motion to reopen and a motion to reconsider. Upon review, we will deny the motions as untimely.

USCIS must deny a motion that does not satisfy applicable requirements. 8 C.F.R. § 103.5(a)(4). A motion must be filed within 33 calendar days of the date that the unfavorable decision was served by mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). Service of a decision by mail is complete upon mailing, not upon its receipt. 8 C.F.R. § 103.8(b). A rejected submission does not retain a filing date. 8 C.F.R. § 103.2(a)(7)(ii). We may, in our discretion, excuse a petitioner's failure to file a motion to reopen before the filing period expires if the petitioner demonstrates that the delay was reasonable and beyond the petitioner's control. 8 C.F.R. § 103.5(a)(1)(i). However, there is no such provision for a motion to reconsider. *Id.*

On February 13, 2018, we dismissed the Petitioner's appeal and served the unfavorable decision by mail. The decision stated that the Petitioner may file a motion within 33 days. On March 29, 2018, USCIS served by mail a notice that it rejected the Petitioner's initial motion attempt because the filing fee submitted with the combined motions was incorrect. USCIS received the complete combined motions with the correct filing fee on May 18, 2018, which is 50 days after the rejection notice date and 94 days after the service date of the appeal dismissal notice. The record does not contain sufficient evidence to support the conclusion that the filing delay was reasonable and beyond the Petitioner's control. Therefore, we decline to exercise our discretion to excuse the failure to file the motion to reopen timely, and there is no exemption for an untimely motion to reconsider.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of G-A-*, ID# 1732095 (AAO June 11, 2018)