U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-B-

DATE: NOV. 30, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a performing artist, seeks classification as an individual of extraordinary ability in the arts. *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 Nebraska Service Center denied the petition and we dismissed the subsequent appeal. The matter is now before us on a motion to reopen. Upon review, we will deny the motion as untimely.

USCIS must deny a motion that does not satisfy applicable requirements. *See* 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). The filing date is the day U.S. Citizenship and Immigration Services (USCIS) receives the motion at the designated filing location, not the date the Petitioner mailed the motion. 8 C.F.R. § 103.2(a)(7)(i).

On July 12, 2017, 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 August 17, 2017, USCIS received a second Form I-290B, Notice of Appeal or Motion, indicating that it was filed as an appeal, rather than filed as a motion. We rejected the second appeal on September 12, 2017, because a dismissed appeal may not be appealed again and because the submission did not satisfy applicable filing requirements for either a motion to reopen or a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(2)-(3).

On September 27, 2017, USCIS received a Form I-290B indicating it is a motion to reopen the first appeal we dismissed on July 12. Because USCIS did not receive this motion within 33 days after the July 12 appeal dismissal date, the motion is untimely.

ORDER: The motion to reopen is denied.

Cite as *Matter of A-B-*, ID# 1051883 (AAO Nov. 30, 2017)