



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

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

In Re: 25592138

Date: FEB. 3, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner 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). After the Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), we dismissed a subsequent appeal after which the Petitioner filed a motion to reopen and reconsider that we dismissed for being filed outside of the permitted timeframe. Now, she files a motion to reopen relating to her previous untimely motions, but we will dismiss this filing. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a filing party must file a motion to reopen within 30 days of the decision, but it also contains a provision that allows U.S. Citizenship and Immigration Services (USCIS) to evaluate whether the failure to file within that timeframe was: (1) reasonable and (2) beyond the control of the filing party. If the party meets both requirements, USCIS has the option to exercise its discretion to excuse the failure to timely file the motion to reopen.

Within this motion filing, the Petitioner offers two reasons her most recent motions were filed untimely, and she requests we accept them as adequate to excuse the late filing. First, she states her spouse was diagnosed with COVID-19 causing the family to quarantine, which resulted in a delay in filing the previous motion. The Petitioner's spouse was diagnosed with COVID-19 on May 24, 2022, and the due date for the previous motion was June 11, 2022. Although she relies the need to quarantine as a reason for her delay, the family received professional notice of the virus's presence on May 24. The government's guidance on quarantining at that time was to isolate for five days. *CDC Newsroom*, Centers for Disease Control and Prevention (Dec. 27, 2021), <https://www.cdc.gov/media/releases/2021/s1227-isolation-quarantine-guidance.html>. That recommended timeframe made the family's isolation period through May 29, leaving her 13 days to file the motion with USCIS. The Petitioner has not demonstrated the delay in filing was reasonable and beyond her control based on her spouse's positive COVID-19 test results.

Moving to her second reason, she claims she sent the package containing the motion through the U.S. Postal Service (USPS) on June 11, 2022, to be delivered on June 13, 2022. As we previously noted, the Petitioner was required to file her previous motion by June 11, 2022. The date of filing is not the

date of submission (here June 11, 2022) but instead it is the date of actual receipt with the required fee (here June 13, 2022). *See* 8 C.F.R. § 103.2(a)(7)(i).

The Petitioner also describes a set of events after June 11 that hindered her ability to file the motion. Even if we set aside the circumstances the Petitioner describes that followed her June 11 submission, she still did not timely file the previous motion as the due date was June 11, the same day she turned the package over to the USPS at 11:43 am. The annotations from USPS on the package reflected its scheduled delivery date was on June 13, 2022, two days outside of the Petitioner's 93-day window to file her previous motion. The Petitioner did not establish this delay was reasonable and beyond her control.

As the Petitioner has not demonstrated the delay in filing her previous motion was reasonable and beyond her control, it is unnecessary that we decide whether to exercise our discretion to excuse such a delay.

ORDER: The motion to reopen is dismissed.