



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

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

In Re: 19205411

Date: JUN. 2, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a violinist, 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 Nebraska Service Center initially approved the petition, but later revoked that approval on notice under the provisions of section 205 of the Act, 8 U.S.C. § 1155, and 8 C.F.R. § 205.2. The Director concluded that the petition had been approved in error, because the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Director also concluded that the Petitioner had provided false information to U.S. Citizenship and Immigration Services (USCIS) regarding her plans to continue working in the area of claimed extraordinary ability.

The Petitioner subsequently filed an appeal. After reviewing the record, we issued a notice of our intent to dismiss (NOID) the appeal, notifying the Petitioner of various adverse findings outside the record of proceeding. The Petitioner subsequently asked to withdraw the appeal, and her withdrawal request was granted. We also entered a separate finding of willful misrepresentation of a material fact against the Petitioner. The matter is again before us on a motion to reconsider.

I. MOTION REQUIREMENTS

A motion to reconsider must establish that our 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). We do not consider new facts or evidence in a motion to reconsider.

II. ANALYSIS

As noted above, we dismissed the appeal based on its withdrawal by the Petitioner.¹ Although we issued a NOID notifying the Petitioner of various adverse findings outside the record of proceeding, she did not acknowledge, discuss, or dispute the adverse findings in her withdrawal request. Our NOID gave the Petitioner an opportunity to respond to the adverse information, as required by 8 C.F.R. § 103.2(b)(16)(i). We also advised the Petitioner that, if she did not overcome this information, then we would make a finding of willful misrepresentation of a material fact. We further advised that, while the Petitioner had the right to withdraw the petition, such a withdrawal would not prevent a finding of willful misrepresentation of a material fact. The Petitioner responded to the NOID with a request to withdraw the appeal, but she did not address the above-referenced adverse findings in any way.

We determined that the Petitioner willfully misrepresented information about her prior employment and claimed recording career, which was material to the adjudication of the petition. On motion, the Petitioner does not identify a law or policy that we may have incorrectly applied in entering our finding of willful misrepresentation. *See* 8 C.F.R. § 103.5(a)(3). Instead, the Petitioner generally disputes our determination, arguing that she was the victim of a dishonest record company and was unaware that her CDs included falsified images. She also asserts that USCIS must have misunderstood her explanations regarding her employment history. In support of the motion, she submits a copy of her 2015 income tax return issued by the State Fiscal Service of Ukraine as evidence of her employment and earned income for that time period.

The Petitioner's motion does not meet the applicable requirements of a motion to reconsider because it does not establish that our decision was based on an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3). In particular, the Petitioner does not cite to any pertinent precedent decision, statute, regulation, binding federal court decision, USCIS policy statement, or other applicable authority to establish that the original decision was defective in some regard. Although she contends that she had no knowledge of the falsified artwork used on her CD covers, and that she either misstated or USCIS misunderstood her employment history, her motion provides no specific citations to applicable law nor does it clearly articulate on what basis she believes the conclusions in our prior decision finding she willfully misrepresented a material fact were erroneous. A motion that does not meet applicable requirements shall be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

For the foregoing reasons, the Petitioner has not met the requirements of a motion to reconsider.

ORDER: The motion to reconsider is dismissed.

¹ A withdrawal may not be retracted and may not be refused. 8 C.F.R. § 103.2(b)(6); *Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976).