



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

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

In Re: 28311126

Date: SEP. 11, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a blogger and social media influencer, 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.

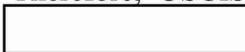
The Director of the Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner satisfied the initial evidence requirement for this classification, which requires documentation of a major, internationally recognized award or evidence that meets at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3). The Petitioner subsequently filed combined motions to reopen and reconsider, followed by a motion to reconsider. In both instances, the Director reaffirmed the denial of the petition. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

The Petitioner has appealed the unfavorable decision on her motion to reconsider, dated March 30, 2023, in which the Director stated:

After a thorough review, USCIS finds that the motion satisfies the regulatory requirement for filing a motion to reopen and/or reconsider at Title 8 C.F.R. § 103.5(a)(2) and 103.5(a)(3).

Therefore, USCIS grants the motion to reconsider the Form I-140 of denied case



After additional review of the record of proceeding, including your motion, USCIS has determined that you have not established eligibility for the requested benefit.

USCIS is denying the approval of Form I-140. You will be receiving a decision letter under separate cover.

On appeal, the Petitioner asserts that she did not receive a separate decision letter on her motion to reconsider and therefore, the Director failed to provide any substantive explanation regarding the basis for denial.

The record supports the Petitioner's assertion that the Director did not issue a legally sufficient decision with respect to her motion to reconsider. The Petitioner's brief on motion alleged several errors in the Director's application of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) to the facts presented and in the Director's interpretation of the plain language of those criteria. The decision does not address these arguments, and instead summarily concludes those arguments were insufficient to overcome the Director's reasons for denying the petition. Although the Director advised the Petitioner that she would receive a decision on the merits under separate cover, USCIS records indicate that no separate decision was issued.

An officer's written decision must fully explain the specific reasons for denial. *See* 8 C.F.R. § 103.3(a)(1)(i). When a decision does not meet these requirements, the petitioner does not have a fair opportunity to contest the decision on appeal. *See Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Because the Director has not yet addressed the merits of the Petitioner's motion to reconsider and did not explain the specific reasons for affirming the denial, the record of proceeding is not ripe for us to consider the Petitioner's substantive arguments on appeal. We will therefore withdraw the Director's decision dated March 30, 2023, and remand the matter for further review and entry of a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.