



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

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

In Re: 20629293

Date: MAY 13, 2022

Motion on Administrative Appeals Office Decision

Form I-129, Petition for Nonimmigrant Worker (Athlete, Artist, or Entertainer – P)

The Petitioner, a [redacted] establishment, seeks to classify the Beneficiary as a P-3 nonimmigrant to work as a [redacted] Artist.” See Immigration and Nationality Act (the Act) Section 101(a)(15)(P)(iii), 8 U.S.C. § 1101(a)(15)(P)(iii). The P-3 classification makes visas available to foreign nationals who perform, teach, or coach as artists or entertainers, individually or as part of a group, under a culturally unique program.

The Director of the California Service Center initially denied the petition and subsequently affirmed her decision on motion, concluding that the Petitioner did not establish eligibility to classify the Beneficiary as a P-3 nonimmigrant artist. We dismissed the Petitioner’s appeal and dismissed its subsequent motion to reopen.<sup>1</sup> The Petitioner then filed a second motion to reopen, and we dismissed that motion as untimely. The Petitioner filed a third motion to reopen providing additional documentation and a brief asserting the delay in filing its previous motion to reopen was reasonable and beyond its control. We dismissed the motion, finding the Petitioner failed to establish the untimely filing was reasonable and beyond its control.

The matter is now before us for a fourth time on a motion to reopen, which is untimely filed. With the motion, the Petitioner submits additional documentation and a brief asserting that the delay in filing its second motion to reopen was reasonable and beyond its control.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

## II. MOTION REQUIREMENTS

A motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Any motion to reopen a proceeding before the Service filed by an appellant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this

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<sup>1</sup> See *Matter of D-R-S-K-F-*, ID# 1788420 (AAO Dec. 11, 2018) and In Re: 4367462 (AAO Mar. 2, 2020).

period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the Appellant or petitioner. 8 C.F.R. § 103.5(a)(1)(i).

## II. ANALYSIS

The record reflects that we dismissed the Petitioner's first motion to reopen on March 2, 2020. The record indicates that our decision was mailed to the Petitioner at its business address. The Petitioner filed its second motion to reopen on May 22, 2020, 81 days after we issued our decision. We dismissed the Petitioner's third motion to reopen on July 28, 2021, which we incorporate here by reference. The Petitioner attempted to file its fourth motion to reopen on August 30, 2021, but its Form I-290B was rejected for failure to fill out required fields and returned to the Petitioner on September 11, 2021. The Petitioner then filed its fourth motion to reopen on November 4, 2021, almost five months after the date of the previous decision. On motion, the Petitioner provides a new affidavit and attests that his second motion to reopen was delayed due to factors outside of its control.

The applicable regulations state that a motion on an unfavorable decision must be filed within 33 days of the date USCIS mails the decision. *See* 8 C.F.R. §§ 103.5(a)(1), 103.8(b). During the coronavirus (COVID-19) pandemic, USCIS issued guidance that Form I-290B, Notice of Appeal or Motion, would be accepted if filed within 60 days of the unfavorable decision. In the current motion, the Petitioner argues its filing was untimely due to the COVID-19 pandemic that closed the business on or about February 20, 2020, for one year and caused the Petitioner to not check its business mail for a couple of weeks or even months and requests we reopen the matter and approve its petition.<sup>2</sup> This information, however, is not sufficient to demonstrate that the delay in filing the second motion was reasonable and beyond the control of the Petitioner to warrant excusing the untimely filing as a matter of discretion. We do not find Petitioner's statement, that it failed to check its mailbox resulting in a delay in filing its second or current motion, a sufficient basis for discretionary exemption in the matter because the basis of this assertion cannot be considered a matter outside of the Petitioner's control as these events occurred over one year prior to the filing of the current motion. The Petitioner has submitted no specific evidence to demonstrate that delaying the submission of the Form I-290B was outside its control in the current motion.

Additionally, the Petitioner has offered no explanation for the most recent rejected filing or the subsequent delay of nearly two months taken to re-file the current motion and therefore has failed to establish that the untimely filing was reasonable and beyond its control. As the record does not establish that the failure to file the current motion within 60 days of the previous decision was reasonable and beyond the Petitioner's control, we will dismiss the instant motion as untimely. 8 C.F.R. § 103.5(a)(1)(i).

## III. CONCLUSION

The current motion to reopen does not include new facts or evidence establishing that the Petitioner's delay in filing its second motion was reasonable and beyond its control or that its current untimely

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<sup>2</sup> The Petitioner, on motion, provides arguments regarding the reasons for delay of its second motion to reopen and appears to offer the same argument for the present untimely motion.

motion to reopen was reasonable and beyond its control. Accordingly, the motion will be dismissed for failing to meet the applicable requirements.

**ORDER:** The motion to reopen is dismissed.