U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37272652

Date: APR. 17, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner is an integration architect who 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). 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.

SCOPS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) 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 motions.

I. LAW

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award).

If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles). Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), any new facts and documentary evidence must demonstrate eligibility for the required immigration benefit at the time the application or petition was filed. A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the case's outcome).

A motion to reconsider must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that our prior decision was based on an incorrect application of law or policy, and (3) establish that our prior decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

We incorporate this case's procedural history by reference from our previous discussion on the matter in the appeal. The issues here are whether the Petitioner: (1) has submitted new facts, supported by documentary evidence, to warrant reopening, and (2) has established that we incorrectly applied the law or USCIS policy in dismissing his appeal.

And the matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision; the decision on his appeal and only after such a demonstration may he address regulatory criteria or topics that we did not discuss in our appeal dismissal. General support that a motion must first overcome the most recent decision lies within the regulation at 8 C.F.R. § 103.5(a)(1)–(3) where it repeatedly discusses the underlying or latest decision, it limits the time one has to file a motion after the most recent decision, and it references jurisdiction resting with the entity who made the latest decision. This demonstrates that any motion must first address and overcome the most recent adverse decision before the filing party's arguments may move on to any issue that arose in a previous petition, appeal, or motion filing.

Therefore, we will only consider new facts supported by evidence (for the motion to reopen) to the extent that it pertains to our latest decision dismissing the appeal dated December 16, 2024. Likewise, we will only address the Petitioner's arguments that we erred in some manner in that same decision. We will not entertain any discussion for any decision that occurred throughout these proceedings unless the Petitioner first shows "proper cause" to reopen or reconsider our December 16, 2024 decision. *See* 8 C.F.R. § 103.5(a)(1)(i).

Prior to addressing the main thrust of the Petitioner's claims, we set the parameters in this combined motion. Before SCOPS, the Petitioner claimed he met six of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). But at the appellate stage, he only maintained he met three criteria. As a result, we addressed his contributions of major significance claims and when he failed to satisfy that criterion's requirements, we reserved the remaining criteria he claimed on appeal. We withheld our determination on the two remaining claims because even if he met the remaining two criteria, he would still not satisfy a minimum of at least three regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)–(x).

The Petitioner's sole basis for the motion to reopen (i.e., his new facts) relates to the claim that his contributions went beyond his employer and affected the industry more broadly. But those are not new facts as his appeal brief contained similar statements. For instance, the brief reflects some evidence "discusses the beneficiary's role in integration solutions, and how the use of his integration solutions has directly influenced large-scale systems impacting the broader technology industry. The [SCOPS] denial decision failed to properly weigh the significance of these contributions in relation to the industry at large . . . ." Because he already advanced this claim within the appeal brief, the same facts will not serve as a proper basis for this motion to reopen. And because the motion to reopen basis falls short, so too does the evidence he offered in support of those claims.

Moving to his motion to reconsider, the Petitioner advances three bases: (1) we failed to properly apply the two-step process as detailed in the *Kazarian* opinion; (2) we misinterpreted the contributions of major significance criterion; and (3) we failed to consider relevant evidence.

Relating to item 1, we already addressed the fact that the Petitioner did not satisfy at least three regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The result is that no purpose would be served to utilize agency resources to perform a final merits determination in the second step of the process when the Petitioner did not establish he warranted a favorable determination within the first step. Where a case warrants a denial regardless of other eligibility considerations, it is unnecessary that we address those other considerations. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)).

Turning to item 2, the Petitioner briefly alleges that we dismissed his evidence in the form of letters and other corroborating evidence that established the impact of his work beyond individual employers. However, he offers no additional details informing us of what letters he might be referencing, nor does he provide any indication of how any letters might verify his allegation in the motion to reconsider. A bare and conclusory assertion is insufficient to preserve an argument for resolution on the merits. *Matter of Garcia*, 28 I&N Dec. 693, 693 (BIA 2023) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) and finding issues that are not meaningfully challenged in the are waived); *Thaler v. Perlmutter*, 130 F.4th 1039, 1052 (D.C. Cir. 2025) (citing *Abdullah v. Obama*, 753 F.3d 193, 199 (D.C. Cir. 2014).

Finally for item 3, the Petitioner again makes this allegation in passing without providing additional specifics to support his declaration and that is not an adequate basis in which to rely upon for this motion to reconsider. *Garcia*, 28 I&N Dec. at 693; *Thaler*, 130 F.4th at 1052.

In summary, the Petitioner has not provided an adequate basis for his motion to reopen, nor for his motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.