U.S. Citizenship and Immigration Services

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

In Re: 42654767

Date: APR. 29, 2026

Motions on Administrative Appeals Office Decision

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

The Petitioner, an accounting and tax consultant who claims "extraordinary ability" under Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A), files a second round of combined motions to reopen and reconsider, contending that we erred in dismissing the first round. *See In Re: 40852121* (AAO Jan. 23, 2026). Her motion to reopen does not meet applicable requirements, and her motion to reconsider does not establish her eligibility for the requested benefit. We will therefore dismiss the motions.

## I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish that our prior decision misapplied law or policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, regulations limit our scope of review to the prior decision. *See* 8 C.F.R. § 103.5(a)(1)(i), (ii) (referring to "the prior decision" and "the latest decision in the proceeding"). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. A petitioner must establish eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

## II. ANALYSIS

### A. The Motion to Reopen

The Petitioner's motion to reopen neither states new facts nor contains documentary evidence. Thus, the motion does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(2). We will therefore dismiss it. *See* 8 C.F.R. § 103.5(a)(4) ("A motion that does not meet applicable requirements shall be dismissed.")

### B. The Motion to Reconsider

The Petitioner contends that our prior decision "mischaracterizes the record" by finding that her prior motion to reopen did not state new facts. She states that the motion included: her "personal declaration

clarifying material facts;" "[e]vidence relating to continued professional activity;" "[d]ocumentation of ongoing business operations;" and "[e]vidence of pursuit of [an] additional immigration classification." She says: "These submissions constitute new facts because they post-date the prior adjudication and demonstrate continued professional activity and recognition relevant to eligibility." She contends that: "[e]vidence of continued professional engagement is relevant to sustained acclaim;" "[c]larifying declarations addressing adjudicative concerns qualify as new factual assertions;" and "[d]ocumentation not previously analyzed in the manner now presented cannot be deemed redundant without substantive evaluation."

On reconsideration, we agree with the Petitioner that the statement in her personal declaration regarding her application "for another work visa under a different category" constitutes a new fact. But she has not explained its relevance to this petition. So, our error appears to be harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors). The remainder of her personal declaration, however, discusses facts already in the record, including her: amount of time in the United States; bachelor's degree; work history; real estate and tax preparer's license; attendance at seminars; and activities as a loan processor and bookkeeper.

The Petitioner's prior motion to reopen also included a copy of a 2018 tax registration certificate for her business. Her initial petition, however, also included this certificate. Also, contrary to her contentions, the eight-year-old document does not demonstrate her "continued professional activity" or "ongoing business operations." Thus, while our prior decision failed to recognize a new fact, we properly dismissed the motion to reopen for not establishing the Petitioner's eligibility for the requested benefit.

The Petitioner also contends that our prior decision misinterpreted the term "new facts" in 8 C.F.R. § 103.5(a)(2). She states: "The AAO limited its analysis to whether the specific document had previously existed in the record, rather than assessing whether the factual context and evidentiary reliance had materially changed." She asserts: "Courts have recognized that motions to reopen must be evaluated under a reasonable evidentiary standard and not dismissed on hyper[-]technical grounds."

We generally interpret the term "new facts" to mean facts that are material to the issues raised on motion and that have not been previously submitted in a proceeding. The Petitioner has not pointed to any examples of how we allegedly misinterpreted the term. Also, while she refers to "courts," she has not cited any specific cases supporting her argument. *See* 8 C.F.R. § 103.5(a)(3) (requiring a motion to reconsider to "be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy"). The Petitioner therefore has not established our misinterpretation of the term "new facts."

Regarding the Petitioner's prior motion to reconsider, she contends that our prior decision should have included a final merits determination in her case, assessing whether she demonstrated "sustained national or international acclaim" and recognition for her achievements sufficient to establish her claimed extraordinary ability in her field. *See* section 203(b)(1)(A)(i) of the Act; *see generally* 6 *USCIS Policy Manual* F.2(B)(2), www.uscis.gov/policy-manual. She states:

> The AAO concluded [that] the Petitioner met only one [evidentiary] criterion but did not properly evaluate all submitted evidence under the totality of the circumstances. The decision reflects a piecemeal rejection of evidence without meaningful cumulative analysis. This is inconsistent with established precedent requiring a holistic review.

The petition's approval, however, initially requires the Petitioner's receipt of "a major, international recognized award" or satisfaction of at least three of ten other evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i-x). She has not demonstrated her receipt of a major, international recognized award, and she met only one of the other evidentiary criteria. Thus, because she did not satisfy initial evidentiary requirements, we did not need to make a final merits determination considering all the evidence in its totality. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

The Petitioner also contends that:

> The AAO appears to have applied an elevated standard approaching "beyond reasonable doubt," rather than the required "preponderance of the evidence." The Petitioner bears the burden to show eligibility by a preponderance – meaning more likely than not – not to eliminate all doubt.

Our review of the record, however, shows that our prior decision applied the proper preponderance of the evidence standard. The Petitioner has not provided an example of where we did not. She therefore has not demonstrated that we applied a higher standard of proof.

The Petitioner claims that we should have addressed her arguments about her adjustment of status application. *See* section 245(a) of the Act, 8 U.S.C. § 1255(a). She states: "While eligibility for adjustment itself may be outside AAO review, the legal implications of lawful presence and admissibility are relevant to overall eligibility analysis and discretionary considerations."

Immigrant visa petition proceedings, however, are not the proper forum for admissibility determinations. *Matter of O-*, 8 I&N Dec. 295, 296-98 (BIA 1959); *see generally* 6 *USCIS Policy Manual* B.5(C)(1). The Petitioner has not demonstrated that her admissibility affects her eligibility for classification as an alien with extraordinary ability. She therefore has not established that we erred in declining to address her adjustment arguments.

## III. CONCLUSION

The Petitioner's motion to reopen does not meet applicable requirements, and her motion to reconsider does not establish her eligibility for the requested benefit.

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

**FURTHER ORDER:** The motion to reconsider is dismissed.

**NOTICE:** Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the

issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.