U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38906087

Date: AUG. 14, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner is a petroleum and industrial engineer 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.

Service Center Operations (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 his appeal. The matter returns to us on the Petitioner's combined motion 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 affirm our prior conclusion that the Petitioner has not met the required number of evidentiary criteria. We will dismiss the motion to reopen and reconsider.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if--
>
> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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 regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If a petitioner does not have such an award, then he must provide sufficient evidence material that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if the required number of criteria are met, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming our proper application of *Kazarian*), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that U.S. Citizenship and Immigration Services (USCIS) appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

A motion to reopen must state the new facts to be provided and to be supported by affidavits or other documentation. 8 C.F.R. § 103.5(a)(2). However, any new facts must relate to eligibility at the time the Petitioner filed the petition. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider is based on the existing record and the Petitioner may not introduce new facts or evidence relative to his or her arguments. A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on fresh documents. *Compare* 8 C.F.R. § 103.5(a)(3) *and* 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). 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 outcome).

II. ANALYSIS

1. Regulatory Criteria

> A. "Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." 8 C.F.R. § 204.5(h)(3)(ii).

At the outset, we note that SCOPS discussed the evidence submitted for this criterion and found that the Petitioner did not establish his eligibility. On appeal, the Petitioner did not contest SCOPS's findings for this criterion or offer additional arguments. We therefore concluded that the Petitioner abandoned or forfeited his eligibility claims under this criterion. Any argument a filing party does not raise on appeal is deemed waived. *Matter of C-A-R-R*, 29 I&N Dec. 13, 18 (BIA 2025). On motion, the Petitioner has not resurrected this argument.

> B. "Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." 8 C.F.R. § 204.5(h)(3)(vi).

In the initial filing, the Petitioner indicated he was engaged in scientific research, and he submitted "a copy of [his] monographic work" as evidence under this criterion. The Petitioner is listed as a co-author. SCOPS determined that the Petitioner met the requirements here. However, we determined that the evidence the Petitioner submitted for the record did not demonstrate that he satisfied these requirements. The Petitioner did not submit sufficient information about the publication to demonstrate it was one of the required publication types, or evidence establishing the journal's existence. Although the Petitioner presented the title of his work, he did not identify the publication's name, and it was not apparent from the English language translation. Because we determined that the record lacked such evidence, we withdrew SCOPS's favorable determination under this criterion.

On motion, the Petitioner argues that we improperly disregarded evidence of his scholarly authorship and that our conclusion "reflects both a factual misreading of the record and a legal misapplication of the plain language of the regulation." He argues that he only needs to demonstrate authorship of scholarly articles in the field for which classification is sought and that these articles were published in professional or major trade publications or other major media. He asserts that the publication addressed a highly specialized area within industrial and petroleum engineering; it was published under the auspices of [redacted] and it included an English language translation, a cover page identifying the institutional publisher, and a publisher's letter confirming its appearance in the university's Technical Research Series. He further argues that this series is peer-reviewed, curated by a faculty editorial board, and distributed through both print and digital university archives. In addition, he states that he submitted institutional evidence verifying the circulation and scholarly nature of the series.

On motion, the Petitioner has not overcome our determination that the monograph does not constitute a major publication. Although the Petitioner references the circulation of the monograph, it appears that the number was capped at a modest 500. Moreover, on motion, the Petitioner has not provided evidence that the journal in which he published his article was a major trade publication. *Matter of Chawathe*. To be a major trade publication, "the trade journal must be one of the major publications in the field." *Braga v. Poulos*, No. CV 06-5105 SJO (FMOx), 2007 WL 9229758, *6 (C.D. Cal. July 6, 2007). Thus, the Petitioner has not demonstrated his claimed authorship of scholarly articles in his field in a major trade publication. We further determine that the publication does not meet the requirements of a major trade publication. Upon further consideration however, the Petitioner has established that his 1993 monograph titled, "Mathematical models of control system functioning/Gas production and transportation," is a professional publication. The term "profession" includes but is not limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. *See* section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32).

In evaluating whether a submitted publication is a professional publication, a relevant factor includes the intended audience. *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policy-manual. Here, the intended audience includes engineers, a profession. Because the Petitioner demonstrated the publication's intended audience meets the definition of "profession" under the statute and regulations, the Petitioner has established the publication qualifies as a professional one. Therefore, upon further consideration, we determine that the Petitioner meets this criterion.

> C. "Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." 8 C.F.R. § 204.5(h)(3)(i).

This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the alien is the recipient of the prizes or awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

The Petitioner claimed two honorarium certificates under this criterion and SCOPS determined that he did not meet the regulatory requirements. SCOPS's request for evidence (RFE) conveyed that the certificates appeared to represent local work-related honors instead of accolades recognized by the field. SCOPS also concluded the RFE response materials were inadequate to satisfy the criterion's requirements as two photographs of the evidence coupled with counsel's assertions were not sufficient to meet his burden of proof under this requirement. On appeal, the Petitioner offered additional assertions about his evidence similar to the claims he presented to SCOPS. He did not offer any additional evidence with the appeal.

We agreed with SCOPS that the Petitioner's assertions, coupled with the assertions of his attorney, and his evidence consisting of two photographs fell short of meeting his burden of proof. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to

produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

Second, a petitioner must satisfy the burden of persuasion, meaning they must establish the degree to which their arguments and evidence should persuade or convince USCIS that the requisite eligibility parameters have been met (i.e., the obligation to persuade the trier of fact of the truth of a proposition). *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 274 (1994). The level at which petitioners must persuade in the present context is the preponderance of the evidence. Whether a petitioner can show that a particular fact or event is more likely than not true is the determinant of whether they have met the preponderance of the evidence standard of proof.

On motion, the Petitioner again points to the honorarium certificates and repeats his arguments on appeal. He asserts that the Petitioner received honorarium certificates from [redacted] and the [redacted] in acknowledgment of his leadership in large-scale modernization projects that directly improved Uzbekistan's national gas infrastructure, and that these entities are not minor or local employers but are principal operators of Uzbekistan's energy grid. We determine that the honorarium certificates do not meet this criterion. The honorarium certificates on their faces explain why they were given to the Petitioner. The honorarium certificate from [redacted] states that it was presented to the Petitioner "on the occasion of the employee's professional holiday effective work, outstanding performance among his peers and for actively participating in public events." While the honorarium certificate from [redacted] states that is being presented to the Petitioner "Successfully [sic] and for showing a special example at work with selfless attitude." The honorarium certificates represent the Petitioner's recognition and appreciation for his work rather than a nationally recognized award for excellence.

In addition, the Petitioner asserts that he was presented with a medal from the President of Uzbekistan in celebration of the country's tenth anniversary of its independence. He proffers that this medal "honors individuals who have made significant contributions to national infrastructure and development" and the "award is granted selectively at the national level, and its issuance is a matter of public record, not internal employment recognition." While the record contains a photograph of the front of the purported medal, the photograph does not establish that it was presented to the Petitioner. No name is included on the face of the medal, and the Petitioner has not provided a photograph of the back of the medal. Moreover, the medal is not accompanied by a certificate identifying the Petitioner as the recipient. Furthermore, there is insufficient documentation in the record explaining under what circumstances the medal is awarded. The Petitioner states that the medal was "conferred by presidential decree," however the Petitioner did not submit a copy of the decree issued by the President of Uzbekistan explaining the purpose of the medal and on whom it may bestowed. Even if we were to consider this medal, the Petitioner has not demonstrated that the medal was awarded to honor "individuals who have made significant contributions to national infrastructure and development" and that it is "granted selectively at the national level." The language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the Petitioner's awards be nationally or internationally recognized in the field of endeavor and it is his burden to establish every element of this criterion. The record is insufficient to confirm that the Petitioner's medal constitutes his receipt of a nationally or internationally recognized prize or award for excellence in the field of petroleum and industrial engineering. Consequently, on motion, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

> D. "Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." 8 C.F.R. § 204.5(h)(3)(viii).

On appeal we reserved the above criterion because the Petitioner's arguments failed on other criteria. Consequently, he could not numerically meet the required number of criteria required to establish eligibility. Therefore, it was unnecessary for us to consider these additional grounds under the regulation.

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." The role may be shown to be leading or critical for a division or department of an organization or establishment, or for the organization or establishment overall. For a critical role, evidence should show that the alien has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment. In determining whether the organization or establishment, or a department or division thereof, has a distinguished reputation, relevant factors include its size, longevity, scale of its customer base, and relevant media coverage. *See* 6 *USCIS Policy Manual*, *supra,* at F.2(B)(1).

On motion, the Petitioner submits an April 2025 recommendation letter from V-K-,[1] the First Deputy Director of [redacted] In the letter, V-K- opines that the Petitioner "was a very honest and professional individual, who trained many highly skilled professionals. All tasks assigned to him were completed conscientiously and within the established deadlines." V-K- describes the work the Petitioner did and otherwise repeats the information already in the record including that from 1998 to 2001, the Petitioner was the Head of the administration and that the administration employed about 3,500 people, consisting of 20 subordinate divisions. However, this letter is not from an employer as required by regulation. 8 C.F.R. § 204.5(g)(1) states that the evidence of experience *shall* consist of letters from *employers*. Here, V-K- does not indicate that he was at any time the Petitioner's employer. This recommendation letter is therefore insufficient to meet the criteria at 8 C.F.R. § 204.5(h)(3)(viii). Moreover, the Petitioner has not indicated that evidence relating to his qualifying experience or training was unavailable. Furthermore, because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on motion. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). We therefore determine that the Petitioner has not met this criterion.

2. Remaining Claimed Criterion

However, as the Petitioner has not fulfilled the initial evidentiary requirement of three criteria that he has asserted under 8 C.F.R. § 204.5(h)(3), we will again reserve the issue of whether the Petitioner meets the criterion at 8 C.F.R. § 204.5(h)(3)(iii) concerning published material about the individual in

[1] We use initials to protect the privacy of individuals.

professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. *See 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)); *see also Matter of Larios-Gutierrez De Pablo & Pablo-Larios*, 28 I&N Dec. 868, 877 n.8 (BIA 2024) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Therefore, it is unnecessary for us to consider whether he is eligible under 8 C.F.R. § 204.5(h)(3)(iii) because he cannot meet the required numerical criteria.

3. Final Merits Determination

On appeal, we reserved a final merits decision. We determined that there was insufficient evidence that the Petitioner has the acclaim and recognition needed for the requested classification. On motion, the Petitioner disagrees with our findings. We have reversed one of our findings, but it is not sufficient for the Petitioner to establish eligibility for the benefit. Because he has not been determined to have garnered acclaim and recognition and he has not met the requisite number of evidentiary criteria, we need not reach final merits issues and hereby reserve their consideration.

III. CONCLUSION

The Petitioner has not demonstrated eligibility for the requested classification. Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). *See also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or 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.