U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39637663

Date: AUG. 19, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a scientific researcher, 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.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that she meets the initial evidence requirements for this classification, either through her receipt of a major internationally recognized award or by satisfying at least three of the ten evidentiary criteria set forth in the regulations. We dismissed an appeal, a subsequent motion to reopen and a motion to reopen and reconsider. The matter is now before us on a motion to reopen and reconsider.

In our dismissal of the appeal, we determined that the Petitioner did not demonstrate that she had a one-time achievement under 8 C.F.R. § 204.5(h)(3), nor did she provide evidence sufficient to demonstrate that she met at least three of the criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x); we therefore did not conduct a final merits analysis under Kazarian, reserving the issue.[1]

Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings—our dismissal of the motion to reopen and reconsider. 8 C.F.R. § 103.5(a)(1)(ii).

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). Upon review, we will dismiss the combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the

[1] *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant did not otherwise meet their burden of proof).

record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). 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).

In her prior motion, the Petitioner reasserted her eligibility by citing previous arguments and resubmitting evidence previously included in the record.[2] She also submitted a paper that she co-authored which was published several months after the denial of her petition. We informed the Petitioner that we could not consider this evidence because evidence submitted on motion to reopen must establish eligibility at the time a petition is filed. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Therefore, because the Petitioner did not submit new facts that would warrant the reopening of the proceedings, she did not meet the requirements for a motion to reopen. 8 C.F.R. § 103.5(a)(2). The Petitioner did not establish that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, she did not meet the requirements for a motion to reconsider. 8 C.F.R. § 103.5(a)(3). We therefore dismissed the combined motion. 8 C.F.R. § 103.5(a)(4).

The Petitioner's current motion is predicated on her alleged non-receipt of a notice informing her that her appeal had been transferred to the Administrative Appeals Office (AAO). The Petitioner correctly states that after she filed her appeal, SCOPS had forty-five days to conduct an initial field review, and if the decision remained unfavorable, then SCOPS would forward the appeal to the AAO; and she would receive a Notice of Transfer to the AAO. The Petitioner asserts that she never received a Notice of Transfer. However, the Petitioner has not explained how this perceived procedural anomaly harmed her case, especially where the Notice of Transfer would only serve to inform the Petitioner that her case with sent to the AAO. Moreover, the Petitioner's recourse if she did not receive a Notice of Transfer to the AAO within seventy-five days of filing an appeal was to contact the United States Citizenship and Immigration Services (USCIS) Contact Center by phone or through e-mail. *See generally AAO Practice Manual*, Ch. 6.2, https://www.uscis.gov/administrative-appeals/aao-practice-manual; s*ee also*, USCIS policy memorandum PM-6-2-0124, *Initial Field Review of Appeals to the Administrative Appeals Office* 2 (Nov. 4, 2015), https://www.uscis.gov/legal-resources/policy-memoranda. Regardless however, because the Petitioner did not raise this issue on appeal, we consider this argument waived.

On motion, the Petitioner resubmits the same evidence that is currently in the record. We have previously considered this evidence and have determined that it is insufficient to establish her eligibility for the benefit. We note that the Petitioner also submits additional information from *Wikipedia* and *Evisa* about the [redacted]. However, we have already determined that the Petitioner's membership in the [redacted] does not meet the requirements of 8 C.F.R. § 204.5(h)(3)(ii). Moreover, 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 appeal. *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

[2] *See, e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision").

"petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). The Petitioner also submits a copy of an electronic membership card for the [redacted], and a Wikipedia printout about [redacted]. Her [redacted] membership card indicates that she is a common member, with the position of junior researcher specializing in materials science. The informational and welcome email from [redacted] indicates that the Petitioner joined [redacted] in June 2025, two years and nine months after she filed her petition. We therefore cannot consider this evidence concerning [redacted] because evidence submitted on motion to reopen must establish eligibility at the time a petition is filed. *Matter of Katigbak*, 14 I&N Dec. at 49.

Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceedings, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

The Petitioner requests that we contradict our prior decision despite our explanation of why the record does not establish eligibility. The Petitioner has submitted a nearly identical brief making the same arguments as she did in her prior motion. The Petitioner's repeated claims do not show that we committed legal error, but rather only indicate that she disagrees with our decision. Because 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, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

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.