U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39106042

Date: AUG. 20, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 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 or at least three of the ten regulatory criteria. We dismissed a subsequent appeal and a combined motion to reopen and reconsider on the same basis. The matter is now before us on a second 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 will dismiss the motion.

A motion to reopen must state new facts and be supported by affidavits or other 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 record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). The scope of any motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Thus, our analysis for this combined motion is limited to whether the Petitioner has submitted new facts supported by documentary evidence or otherwise established that the dismissal of the first combined motion was based on an incorrect application of law or policy.

We find that the Petitioner has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our prior decision was based on an incorrect application of law or USCIS policy or that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. We incorporate our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

In our decision to dismiss the Petitioner's first motion to reopen, we noted that the Petitioner's sole basis for the motion to reopen related to the claim that his contributions went beyond his employer and affected the industry more broadly and those were not new facts as his appeal brief contained similar statements. With the instant motion to reopen, the Petitioner submits documentation in support of his assertion that he meets three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x).[1] As detailed above, we will only consider new evidence to the extent it pertains to our latest decision dismissing the motion to reopen. 8 C.F.R. § 103.5(a)(1)(i), (ii). Here, the Petitioner has not provided new facts supported by documentary evidence to establish that we erred in dismissing his prior motion based on our finding that the Petitioner had not submitted new facts. We thus have no basis to reopen our prior decision to dismiss the Petitioner's first combined motion to reopen. We will not re-adjudicate the application anew.

Moving to the motion to reconsider, the Petitioner asserts the following: (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. We note that these are the same assertions that were made in the Petitioner's first motion to reconsider. In summary, we determined that in regard to item 1, because the Petitioner has not satisfied the threshold "initial evidence" requirements at 8 C.F.R. § 204.5(h)(3), we cannot conclude that they are an alien of extraordinary ability and need not further analyze the merits under the statute. *See Kazarian*, 596 F.3d at 1119-20; *see also Nagaiah v. Allen*, -- F.Supp.3d ---, 2025 WL 1508028, at *10 (E.D. Pa. May 27, 2025) (finding the regulation "establishes a necessary, not sufficient, evidentiary requirement for a petitioner who seeks an extraordinary ability visa."). Turning to item 2, while the Petitioner briefly alleged that we dismissed his evidence in the form of letters and other corroborating evidence that established the impact of his work beyond individual employers, we noted that he offered no additional details informing us of what letters he might be referencing, nor did he provide any indication of how any letters might verify his allegation in the motion to reconsider. Finally for item 3, we determined that the Petitioner made the allegation in passing without providing additional specifics to support his declaration. With the instant motion, the Petitioner has reiterated his previous assertions, which we reviewed and considered prior to dismissing his first motion to reconsider. The Petitioner has not established that our prior decision was based on an incorrect application of law or USCIS policy or that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

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.

[1] The Petitioner notes that the evidence submitted with the instant motion "post-dates the AAO's last decision." Every application form, benefit request, or other document must be submitted to USCIS and executed in accordance with the form instructions. *See* 8 C.F.R. § 103.2(a)(1). The Form I-290B, Instructions for Notice of Appeal or Motion, states that "[a] motion to reopen must state new facts and must be supported by documentary evidence demonstrating eligibility for the required immigration benefit *at the time you filed the application or petition*." (Emphasis added).