U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40759289

Date: DEC. 16, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a researcher, 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 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 a subsequent appeal and three motions. The matter is now before us on combined motions to reopen and reconsider.

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 motion.

In our dismissal of the Petitioner's appeal, we agreed with SCOPS that the Petitioner meets two of the ten evidentiary criteria, those pertaining to her participation as a judge of the work of others in her field and to her authorship of scholarly articles in her field. But we concluded that she did not meet any of the four additional criteria she claimed on appeal, and thus did not meet the initial evidence requirements for this classification. We reserved the issue of whether she had established the requisite sustained national or international acclaim in her field and that she is one of the small percentage at the very top of her field.[1]

A motion to reopen must state new facts and be supported by documentary evidence. 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

[1] Because the Petitioner was ineligible for classification as an alien of extraordinary ability, we did not need to reach, and therefore reserved, these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

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 previous motion to reopen, the Petitioner resubmitted much of the same evidence that previously existed in the record. While she also submitted new evidence pertaining to her membership in membership in associations under the criterion at 8 C.F.R. § 204.5(h)(3)(ii), we informed her that this evidence could not be considered because she had been previously afforded a reasonable opportunity to provide it. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record). In addition, the evidence pertaining to her membership in an additional association, Material Research Society (MRS), could not be considered because a petitioner must establish eligibility for the requested benefit 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). The evidence showed that she became a member of the MRS two years and nine months after filing her petition.

On motion, in addition to evidence she previously submitted, the Petitioner now submits an updated version of her Google Scholar profile.[2] She asserts that this new evidence establishes eligibility, as it shows increased citations by other researchers to her published research work and therefore further contributions to her field of materials science. However, the new citations reflected in her profile occurred years after she filed her petition seeking classification as an alien of extraordinary ability. Because the Petitioner must establish eligibility for the requested classification at the time her petition was filed, we will not consider this evidence on motion. *Matter of Katigbak*, 14 I&N Dec. at 49.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. 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 proceeding, we have no basis to reopen our prior decision.

Turning to the Petitioner's motion to reconsider, she 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). As with the motion to reopen, we will only review our 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.

[2] The Petitioner also submits a copy of her recent credit report, but makes no assertions regarding the relevance of this information.

As she did in her previous motion, the Petitioner asserts that she did not receive USCIS notice of the transfer of her appeal to our office. We previously informed her of the proper recourse in this instance, and noted that she had not explained how a failure to receive this notification had harmed her case. The Petitioner informs us on her current motion that she contacted the USCIS Contact Center and is awaiting a response to her inquiry, but she does not provide an explanation of how this claimed administrative processing error affected our adjudication of the merits of her appeal. This claimed error was, at most, 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 scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner's contentions in her current motion merely reargue facts and issues we have already considered in our previous decisions. *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"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

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.