U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40720269

Date: DEC. 18, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a chief executive officer and entrepreneur, seeks classification as an alien of extraordinary ability under section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes immigrant visas available to those who 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 his eligibility for this highly restrictive first preference immigrant visa classification. We dismissed the appeal and a subsequent motion to reopen and reconsider. This matter is now before us on a second motion 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 motions.

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

The Petitioner claimed he met five of the ten criteria at 8 C.F.R. § 204.5((h)(3)(i)-(x) but SCOPS denied the petition after finding that the Petitioner satisfied only one out of the required three initial criteria. *See* 8 C.F.R. § 204.5(h)(3); *see also Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010).[1]

[1] The implementing regulation sets forth a multi-step analysis to establish extraordinary ability: the first step requires a petitioner to demonstrate international recognition in the field through a one-time achievement or provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x); and after

We dismissed the subsequent appeal, concluding that the Petitioner has met none of the initial criteria and withdrew SCOPS' determination that the Petitioner met one criterion at 8 C.F.R. § 204.5(h)(3)(iii). The Petitioner then filed combined motions to reopen and reconsider, asserting that we imposed incorrect standard of proof, misapplied the *Kazarian* two-step review, and erred by reserving review of other claimed criteria. With the motion to reopen, the Petitioner claimed to have submitted additional evidence that was "newly obtained and previously unavailable" showing that he meets three criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii) and (iii). However, we dismissed his prior motions as they did not meet the motion requirements.

We will again dismiss the Petitioner's instant motions as they do not meet the motion requirements. Here, the Petitioner essentially repeats the claims made in his prior motions. On motion to reopen, the Petitioner claims in his brief that he attached "newly obtained evidence" that was "unavailable at the time of the initial adjudication," but such evidence was not included with the brief. Therefore, we conclude that the motion to reopen does not offer new facts supported by documentary evidence. 8 C.F.R. § 103.5(a)(2).

On motion to reconsider, the Petitioner does not contest the correctness of our prior decision. Instead, the Petitioner asserts that SCOPS erred by imposing incorrect standard of proof (citing *Matter of Chawathe*, 25 I&N Dec. 369), misinterpreting the standards in two criteria under 8 C.F.R. § 204.5(h)(3)(i) and (ii), disregarding expert letters and organizational attestations (citing *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989)), and failing to correctly apply *Kazarian* two-step analysis. The Petitioner's contentions in his current motion merely reargue facts and issues we have already considered and analyzed in our appellate decision, and we will not re-adjudicate the petition anew. *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").

As stated above, 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 assertions do not pertain to our latest decision in the proceeding issued on August 18, 2025.[2] The Petitioner has not demonstrated that we erred in applying law or policy in our last decision or that the decision was incorrect based on the evidence then before us when we dismissed his prior motion. Therefore, the Petitioner's motion to reconsider does not meet the requirements at 8 C.F.R. § 103.5(a)(3).

In sum, although the Petitioner has claimed new facts, he did not provide documentary evidence in support of the motion to reopen, and thus, 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 motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

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showing that the petitioner meets the initial evidence requirements, the second step is to consider the totality of the material in a final merits determination.

[2] Even if we are to consider that the Petitioner's contentions apply to our prior decision, he has not fully explained how we misapplied *Matter of Chawathe*, *Matter of E-M-*, or the *Kazarian* framework. In addition, the Petitioner raised issues with only two criteria at 8 C.F.R. § 204.5(h)(3)(i) and (ii), essentially waiving his prior claim that he met the third criterion at 8 C.F.R. § 204.5(h)(3)(iii). Therefore, the Petitioner does not show that he meets three regulatory criteria in advance of the final merits analysis.

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.