U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40888403

Date: FEB. 10, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, a chief technology officer, 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 record did not establish that the Petitioner met the statutory and regulatory requirements for the requested classification. The Petitioner appealed and we remanded the matter to SCOPS, who then denied the petition a second time. We dismissed a subsequent appeal. The matter is now before us on a combined motion to reopen and motion to 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 combined motion.

I. MOTION TO REOPEN

We incorporate by reference our analysis in our prior decision. By way of summation, and in relevant part, we determined that the record satisfies two of the 10 criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x), of which at least three must be met if, as in this case, a petitioner does not have a one-time achievement of a major, internationally recognized award. More specifically, we concluded that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), but it does not satisfy the criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), (viii)-(ix).

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 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).

On motion, the Petitioner submits evidence and he asserts that, in addition to satisfying the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(v), (viii)-(ix). He does not specifically assert on motion—and the record does not support the conclusion—that he meets the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(iii), (vii), or (x).

To address the criterion at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner submits letters from various individuals, copies of research papers he co-authored, and copyright information. Similar to the deficiencies in the letters that we addressed in our prior decision, the letters the Petitioner submits on motion also do not provide details necessary to establish whether his published research or work in robotics, healthcare technology, or any other field have been widely adopted by the respective field(s) or that his research or work otherwise has been cited, referenced, or modeled indicative of being an original contribution of major significance.

The copies of the research papers the Petitioner submits on motion are either already in the record and, thus, not documentary evidence of new facts, *see* 8 C.F.R. § 103.5(a)(2), or dated December 2021 and throughout 2023, after the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers, in November 2021. A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Therefore, the research papers the Petitioner co-authored dated after he filed the Form I-140 in November 2021 cannot—and do not—establish eligibility. Even if the research papers presented new facts that could establish eligibility, they indicate that the Petitioner has made original contributions, but they do not establish whether his contributions have had major significance in any particular field, as required by the criterion at 8 C.F.R. § 204.5(h)(3)(v). Similarly, the copyright information the Petitioner submits on motion is dated September 2022, after he filed the Form I-140 in November 2021. As we explained in our prior decision, copyright information dated 2022, after the Petitioner submitted the Form I-140 cannot—and it does not—establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

To address the criterion at 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner submits a one-page excerpt from a SCOPS decision that states in relevant part simply, "The [P]etitioner submitted sufficient evidence to meet this criterion," without further elaboration on what evidence SCOPS believes satisfies the criterion. We first note that this one-page excerpt from a SCOPS decision is not new to the record and, thus, is outside the scope of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2) (requiring a motion to reopen to state new facts). Moreover, even if the one-page excerpt from a SCOPS decision presented a fact that is new to the record, we are not bound by SCOPS' decisions. *See, e.g.*, *La. Philharmonic Orchestra v. INS*, 248 F.3d 1139 (5th Cir. 2001) (per curiam). We addressed the reasons why the record does not satisfy this criterion in our prior decision and, even if the one-page excerpt from a non-binding SCOPS decision presented a new fact as required for a motion to reopen, SCOPS' conclusory statement—without identifying any particular item of evidence or explaining how it satisfies the criterion—does not overcome our prior analysis concluding that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

To address the criterion at 8 C.F.R. § 204.5(h)(3)(ix), the Petitioner submits information regarding his income and his duties as a project manager for [redacted], wage and industry information from public websites, and letters from representatives of [redacted] and Ajaba Aerobotics. The information the Petitioner submits on motion to reopen regarding his income and duties, and wage and industry information from public websites are substantially similar to information already in the record, and insufficient to establish whether he commanded a high salary or other significantly high remuneration for services, in relation to others in the field for the same or similar reasons we explained in our prior decision.

The [redacted] letters, and an additional paystub for one of the Petitioner's coworkers, purport to establish that the Petitioner's income as a project manager for [redacted] was significantly higher than one other project manager for [redacted]. However, we note that the paystub for the Petitioner's coworker contains an inconsistency that casts doubt on its reliability and sufficiency. Specifically, the paystubs for both the Petitioner and his coworker state that they are "system generated" but, although the Petitioner's paystubs indicate that they are "for the month of May 2017" and "for the month of June 2017," his coworker's paystub states that it is "for the month of 2017." The record does not reconcile why the Petitioner's coworker's system-generated paystub would omit the name of the month it records when the Petitioner's system-generated paystubs do not omit the names of their respective months. Based on this inexplicable inconsistency, the Petitioner's coworker's paystub bears reduced reliability and sufficiency. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (providing that doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition). Even if the paystub bore sufficient probative value, whether the Petitioner's income was higher than a single other individual provides little insight into whether he commanded a high salary or other significantly high remuneration for services, in relation to others in the field, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

In turn, the four-sentence letter from the chief executive officer of Ajaba Aerobotics provides the highest annual salary for that company's project manager in 2017 and 2025 "for benchmarking purposes." However, the Ajaba Aerobotics letter does not elaborate on what its project managers' duties are, in order to determine whether those positions are sufficiently similar to the Petitioner's position, for comparison purposes. Moreover, like the [redacted] letters' deficiencies, the Ajaba Aerobotics letter provides information about merely one annual salary for one company, which again provides little insight regarding the extent to which the Petitioner may have commanded a high salary or other significantly high remuneration for services, in relation to others in the field, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

Because the Petitioner does not establish eligibility through a new fact, the submission does not satisfy the requirements of a motion to reopen; therefore, we will dismiss it. *See* 8 C.F.R. §§ 103.5(a)(2), (4).

II. MOTION TO RECONSIDER

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.

On motion, the Petitioner contests the correctness of our prior decision; however, he does not identify a law or policy we may have misapplied. Because the Petitioner does not identify a law or policy we may have misapplied, the submission does not satisfy the requirements of a motion to reconsider; therefore, we will dismiss it. *See* 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.