U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41453129

Date: FEB. 23, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, a business executive in the pomegranate industry, 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 he meets the initial evidence requirements for this classification, either through his receipt of a major internationally recognized award or by satisfying at least three of the ten evidentiary criteria set forth in the regulations. SCOPS further determined the Petitioner did not establish that his entry to the United States would offer substantial prospective benefits to the country. We dismissed a subsequent appeal. The matter is now before us on a combined 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.

In our appellate decision, we determined that the Petitioner did not establish that he met the claimed criteria regarding the published material or high salary under 8 C.F.R. § 204.5(h)(3)(iii) and (ix).[1] We reserved and did not address the remaining issues at 8 C.F.R. § 204.5(h)(3)(v) and (viii).[2] On a

[1] On appeal, the Petitioner did not address or contest SCOPS' determination that he did not meet the criterion at 8 C.F.R. § 204.5(h)(3)(i), relating to his receipt of lesser awards, nor did he address his eligibility through "comparable evidence" under 8 C.F.R. § 204.5(h)(4). An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

[2] We explained that, because the Petitioner did not meet two of the four claimed criteria, he could not meet the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 204.5(h)(3); therefore, detailed discussion of the two remaining contested criteria at 8 C.F.R. § 204.5(h)(3)(v) and (viii) could not change the outcome of the appeal. Similarly, because the Petitioner did not meet the initial evidentiary requirements, it was not necessary to determine whether the Petitioner's entry to the United States would offer substantial prospective benefits to the country under section 203(b)(1)(A)(iii) of the Act. *See 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 is otherwise ineligible).

combined motion to reopen and reconsider, the Petitioner did not contest his eligibility under these criteria, but asserted that he met the criteria at 8 C.F.R. § 204.5(h)(3)(iii) and (ix). We dismissed the motions because the Petitioner did not submit new facts that would warrant reopening of the proceedings, nor did he establish that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. The Petitioner submitted a subsequent motion to reopen, which we also dismissed. The matter is now before us on another combined motion to reopen and reconsider.

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).

On motion to reopen, the Petitioner submits documentation previously submitted. He does not state new facts related to the evidence of record. Because the Petitioner has not submitted new facts that that would warrant reopening of the proceedings, he has not met the requirements for a motion to reopen. 8 C.F.R. § 103.5(a)(2). The motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

Regarding the motion to reconsider, the Petitioner asserts that our dismissal of his motion to reopen "contained several legal and factual misunderstandings that, once clarified, will show that [he] meets the requirements of the classification sought." He presents several descriptions of what he refers to as "legal and factual errors" that form the basis of his motion. Upon review, we conclude that the Petitioner has not met the requirements for a motion to reconsider. 8 C.F.R. § 103.5(a)(3).

It is not clear how some of his descriptions of purported error refer to the latest decision in these proceedings. For example, the Petitioner cites the two-step process outlined in *Matter of Kazarian*,[3] which involves a final merits determination if a petitioner has met initial evidence requirements, contending that "AAO merged these two stages" and "heightened the evidentiary burden . . . ." However, because the Petitioner did not establish that he had met at least three evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), our dismissal of his motion to reopen did not include a final merits determination. The Petitioner also contends that the decision did not fully evaluate evidence concerning whether he met the criterion at 8 C.F.R. § 204.5(h)(3)(v), which concerns contributions of major significance to the field. Our latest decision, however, did not discuss whether he met this criterion, as it was reserved in our earlier dismissal of the Petitioner's appeal. The Petitioner also asserts that we gave "limited consideration" to letters from individuals with knowledge of his work, although our latest decision did not include discussion of eligibility criteria related to any letters in the record. Further, the Petitioner references the comparable-evidence provision at 8 C.F.R. § 204.5(h)(4), stating that "AAO's failure to apply this flexibility constitutes a legal error that warrants

[3] *See Matter of Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Viscinscaia v. Beers*, 4 F. Supp 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d1339 (W.D. Wash. 2011).

reconsideration." Our latest decision, however, did not discuss comparable evidence because the Petitioner did not address the issue on appeal, thereby waiving it.[4] In addition, the origin of his assertions concerning our purported misinterpretation of "sustained acclaim" and failure to address his arguments regarding *Kazarian* are unclear, as these issues were not discussed in our most recent dismissal.

The Petitioner makes an additional contention concerning whether he met the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which does appear to relate to our latest decision. He asserts that "AAO discounted several materials that were clearly relevant to the regulatory criterion for published material," but he does not identify this material or discuss how we erred in evaluating the record. Instead, he cites a U.S. district court decision[5] that he states "confirmed that publications targeted to the professional audience in the field are valid under this criterion" and concludes, "The decision's restrictive reading of what constitutes qualifying material was inconsistent with that authority." U.S. district court decisions, however, do not bind USCIS in other matters.[6] Regardless, the Petitioner does not explain how we erred in evaluating material in the record related to the criterion for published material.

Because the Petitioner does not explain how our most recent dismissal of his motion to reopen was based on an incorrect application of law or policy, nor does he explain how the decision was incorrect based on the evidence in the record of proceedings at the time of the decision, he has not met the requirements for a motion to reconsider. 8 C.F.R. § 103.5(a)(3). Accordingly, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(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.

[4] An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. at 336 n.5.
[5] *See Buletini v. INS*, 860 F. Supp. 1222, 1234 (E.D. Mich. 1994).
[6] *See Trump v. CASA, Inc.*, 606 U.S. 831, 858 n.17 (2025) (noting that "district court opinions lack precedential force even vis-à-vis other judges in the same judicial district").