U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40589951

Date: JAN. 29, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner 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 the Petitioner had not demonstrated a one-time achievement or satisfaction of at least three of the ten categories of evidence. We dismissed the Petitioner's appeal and two subsequent combined motions to reopen and reconsider. The matter is now before us on a third 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.

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). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Applicant has not provided new facts to establish that we erred in dismissing his prior motion.

The present motion—the Petitioner's third—revisits previous assertions concerning his claimed qualifications as an individual of extraordinary ability. Those assertions, however, are not relevant to our prior decision, which determined that the record did not warrant a discretionary excusal of the Petitioner's failure to file his first motion within the timeframe allowed by regulation. 8 C.F.R. § 103.5(a)(1)(i).

The Petitioner also reiterates that the untimely filing was due to USCIS' delivery and provides previously submitted documents. However, these are not new facts. We determined in our prior decision that the evidence does not establish that USCIS delayed the delivery of his rejection notice.

The Petitioner now introduces, on motion, medical documentation dating from 2021 showing that a pre-diabetic condition and a cataract in his right eye were being monitored by his care provider. He refers to these issues collectively as a "medical impairment" that "compounded" his ability to timely file his motion on his appeal.

While the medical documentation is a new fact submitted to the record, it does not establish that we erred in dismissing his prior motion.[1] As noted, 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 will 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. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. 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).

The Petitioner has not established that reconsideration is warranted. Here, as stated in our most recent decision, we do not have discretion to accept a late-filed motion to reconsider, and he has not established that our decision was incorrect as a matter of law or policy.

As the Petitioner has not satisfied the requirements for reconsideration and the new facts and evidence he submitted do not overcome our previous determination, the motions must be dismissed. 8 C.F.R. § 103.5(a)(2), (3).

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] Even if we were to consider this evidence, the documentation is not accompanied by any credible interpretation of its contents—such as the opinion of the Petitioner's care provider—explaining any impact that the Petitioner's condition had on his ability to timely file his motion. Asserted new facts must be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2); *see Matter of Chawathe*, 25 I&N Dec. at 376 (a petitioner must support assertions with relevant, probative, and credible evidence).