U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40950460

Date: JAN. 29, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, a software engineer, 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 his satisfaction of at least three initial evidentiary criteria. Specifically, the Director found the Petitioner met only two (judging under 8 C.F.R. § 204.5(h)(3)(iv) and roles under 8 C.F.R. § 204.5(h)(3)(viii)) of the four claimed categories of evidence. We dismissed a subsequent appeal, determining that the Petitioner did not meet any other contested criteria (awards under 8 C.F.R. § 204.5(h)(3)(i) and salary under 8 C.F.R. § 204.5(h)(3)(ix)). 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 motions.

I. Analysis

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 has the potential to change the outcome).

On motion, for the first time, the Petitioner claims eligibility for three new criteria – memberships (8 C.F.R. § 204.5(h)(3)(i)), contributions (8 C.F.R. § 204.5(h)(3)(v)), and scholarly articles (8 C.F.R. § 204.5(h)(3)(vi)). The Petitioner had the opportunity to make these eligibility claims when he initially filed his petition or in response to SCOPS' request evidence. Because the Petitioner did not make these claims before SCOPS, we will not consider them for the first time in this appellate proceeding,

including on motion. Generally, appellate bodies will not decide issues in the first instance or consider claims raised for the first time in an appeal. *See National Rifle Association of America v. Vullo*, 144 S.Ct. 1316, 1331 n.5 (2024). Furthermore, regarding the awards and salary criteria, the Petitioner provides previously submitted documentation. As we have already reviewed and addressed the evidence, we will not re-adjudicate the petition anew.

In the appellate decision discussing the awards criterion, we indicated, in part, that the Petitioner provided recommendation letters. However, the letters indicated that the awards were only available to employees of the granting organizations and announced in internal publications; therefore, the Petitioner did not demonstrate recognition of the awards beyond the awarding entities. On motion, the Petitioner submits additional letters from various individuals claiming they are personally aware of the awards. However, the Petitioner's submission of letters from five individuals who have heard about the awards does not demonstrate that the Petitioner's awards qualify as nationally or internationally recognized awards for excellence in the field consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(i). The letters do not provide specific, detailed information explaining the national or international recognition of the awards in the field. Besides personally hearing about the awards, the letters do not reference any other indicators of national or international recognition for excellence or offer any persuasive evidence of them.

In discussing the salary criterion, we indicated, in part, that the Petitioner offered comparative evidence of average salaries rather than showing he commanded a high salary. Furthermore, the Petitioner claimed his cumulative earnings of salary, bonuses, and restricted stock and compared them to only the wages of others without factoring in bonuses and restricted stock; the Petitioner did not provide an "apples to apples" comparison rather than an "apples to oranges" one.

On motion, the Petitioner asserts:

> In its September 3, 2025 decision, the AAO acknowledged that [the Petitioner] submitted salary records, T4 forms, and comparative wage surveys. However, it dismissed the evidence, reasoning that:
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> > • "Average, local or national salary levels do not allow for an appropriate basis of comparison under 8 C.F.R. § 204.5(h)(3)(ix)."
> > • The record "lacked evidence showing that the Petitioner's compensation was consistently higher than that of others in the field, such as percentile-based wage data, longitudinal comparisons, or authoritative industry benchmarks."
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> Accordingly, the AAO concluded that [the Petitioner] had "not demonstrated that his remuneration is significantly higher than that of others in his occupation."

Although the Petitioner claims to quote from our appellate decision, our decision does not contain any of those statements. Moreover, the Petitioner argues that he "now provides . . . records from 2022-2025." However, the Petitioner filed his petition in December 2024, and the evidence relating to events in 2025 occurred after the filing of his petition and will not be considered. *See* 8 C.F.R. § 103.2(b)(1) (indicating eligibility must be established at filing). Furthermore, the Petitioner claims

that "[t]his cures AAO's concern that the evidence was limited to one year." However, our decision made no mention of the Petitioner's evidence being limited to only one year, nor was it an issue raised in our decision.

Again, the scope of a motion is limited to the prior decision, which in this case, is our decision dismissing his appeal. On motion, we will not address issues raised in prior proceedings, including purported determinations or statements we never made.

The Petitioner also submits evidence with self-serving captions embedded on the purported original material describing the content, year, source, and other information, including comparative salary information for a 2022 [redacted] job offer in [redacted] Massachusetts. The Petitioner's altered evidence compromises the integrity of the material and does not represent credible and probative comparable salary or other remuneration information. Although the Petitioner offers his wage history from 2022 – 2024, including other compensation such as bonuses and restricted stock options, the Petitioner did not present reliable comparable documentation establishing that he commanded a high salary or other compensation.

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 makes broad assertions without further explaining how we erred as a matter of law or policy or makes claims not supported by the record. For instance, the Petitioner claims under the salary criterion that "[i]mposing a 'percentile-only' requirement is impermissible under *Kazarian*," and "[t]he AAO faulted Petitioner's evidence for lacking 'percentile-based" wage data and 'longitudinal comparisons.'" Our decision does not reflect we "imposed a percentile-only requirement," nor is there any mention of "longitudinal comparisons." Likewise, the Petitioner asserts that "[t]he AAO also faulted Petitioner's award for lacking external publicity and published award criteria, again not raised in the RFE." Our decision does not "fault" the Petitioner for not submitting external publicity and published award criteria, let alone mention anything about these issues.

In another example, the Petitioner also asserts that we overlooked his submission of nine affidavits under the awards criterion. On the contrary, our decision specifically addressed his recommendation letters, including a discussion of a sample letter. In addition, the Petitioner argues that "[t]he AAO explicitly refused to consider new evidence submitted on appeal, citing procedural timing." However, the Petitioner did not demonstrate that we erred in not considering new evidence on appeal. In fact, in our appellate decision, we cited to 8 C.F.R. § 103.2(b)(11) and *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) to support our determination rather than simply "procedural timing." The Petitioner's unsubstantiated assertions and broad claims of various errors without further elaboration do not show we incorrectly applied law or policy.

II. Conclusion

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not demonstrated that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion 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.