U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43467580

Date: JULY 6, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner 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.

U.S. Citizenship and Immigration Services (USCIS) denied the petition, and we dismissed a subsequent appeal. The matter is now before us on 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 motion.

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. In support of the motion, the Petitioner relies on a district court opinion. But in contrast to the broad precedential authority of the case law of U.S. circuit courts, we are not bound to follow the published decision of a U.S. district court in matters arising even within the same district. *Matter of Duarte-Gonzalez*, 28 I&N Dec. 688, 690 n.2 (BIA 2023) (citing *K-S-*, 20 I&N Dec. 715, 719–20 (BIA 1993)). Although we find a district judge's reasoning useful for consideration in our analysis, we are not required to follow it as a matter of law. *Id*.

Next, the Petitioner argues that because the impetus for USCIS' two-step adjudication process for this immigrant classification originated from a circuit court of appeals that doesn't govern his home residence, that the agency was incorrect to apply it to his case. While the original Ninth Circuit Court of Appeals opinion might have originated from a different jurisdiction from the one governing the Petitioner's home residence, when USCIS adopted the process outlined in that opinion as agency policy, its application was universal to all extraordinary ability immigrant petitions. We are not

persuaded that the two-step process only applies to cases governed by the court of appeals where the process originated.

Beyond that, we sum up the Petitioner's motion arguments as USCIS' final merits determination for this classification is an arbitrary and capricious process. The Petitioner bases his arguments on a single federal district court case that has been the sole court to rule in that manner, *Mukherji v. Miller*, No. 4:24CV3170, 2026 WL 895708, at *6 (D. Neb. Jan. 28, 2026). We begin noting the *Mukherji* court's determination has been rejected not only before it made it (*Nagaiah v. Allen*, 784 F. Supp. 3d 798, 818 (E.D. Pa. 2025); *Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *17 (D. Neb. Sept. 12, 2025)), but also since (*Taneja v. USCIS*, No. 24-CV-05657 (RER), 2026 WL 1734266, at *6–8 (E.D.N.Y. June 16, 2026)).

The *Mukherji* court noted that in 1995 the former Immigration and Naturalization Service proposed a two-step adjudicative process. The court also observed that the Office of Personnel Management's (OPM) docket showed that the 1995 notice of proposed rulemaking (NPRM) was classified as a substantive rule. Based on that classification of the entire NPRM, the court treated the two-step process as the sole reason the proposed rule was a substantive or legislative rule, and it did not evaluate whether the numerous other provisions within the proposed rule might have been the basis for OPM's classification.

On that understanding, the court concluded that the two-step adjudicative process constituted a legislative or substantive rule that could be implemented only through notice-and-comment rulemaking under the Administrative Procedure Act. In doing so, the court did not fully engage with USCIS' stated rationale for adopting the two-step process, namely that a federal circuit court required it, and that using one approach within that circuit and a different approach elsewhere was not prudent or feasible. USCIS' implementing memorandum discussed the circuit court's decision in detail and expressly adopted that approach. USCIS respectfully submits that this explanation satisfies any obligation to articulate a rational basis for the policy change.

In addition, the *Mukherji* decision did not appear to address how that petitioner's satisfaction of the criteria in that case related to the method of adjudication. The court ordered approval of the petition without analyzing whether any favorable determinations made at step one had been reached under the prior approach in which USCIS did not conduct a qualitative sustained-acclaim analysis under each individual criterion. The five criteria the court found satisfied (awards, published material, judging, contributions, and leading or critical role) thus were not adjudicated in the manner the court seemed to contemplate reinstating. USCIS respectfully submits that this omission was not harmless, because it bears directly on whether the court's remedy accords with the adjudicative framework it preferred.

And about congressional intent, USCIS understands Congress to have intended that qualifying candidates for this immigration benefit be among those at the top of their field. The House Judiciary Committee explained: "In short, admission under this category is to be reserved for that small percentage of individuals who have risen to the very top of their field of endeavor." H.R. Rep. 101-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739 (House Committee Report). *Mukherji*, however, understood the legislative history differently, stating that the Conference Report on the Senate bill that ultimately became law "says absolutely nothing" about a requirement that persons seeking priority-worker extraordinary ability classification be part of "that

small percentage of individuals who have risen to the very top of their field" or any similar formulation. H.R. Conf. Rep. 101-955, 101st Cong., 2d Sess. (Oct. 26, 1990).

USCIS respectfully reads the legislative history differently. The "Senate Bill" material the court cited is from a Conference Report, while the "small percentage" language appears in a House Judiciary Committee Report. These documents serve different functions in the legislative process. When a conference report does not address a particular substantive issue, as is the case here, the committee reports that originally developed and explained the provision remain the most authoritative evidence of congressional intent. *See Zuber v. Allen*, 396 U.S. 168, 186 (1969) (noting that committee reports "represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation"); *Garcia v. United States*, 469 U.S. 70, 76 (1984) (explaining that "[i]n surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill").

The House Judiciary Committee Report, H.R. Rep. 101-723, supplies the substantive explanation of Congress's intent for the Immigration Act of 1990's extraordinary-ability classification, including the "small percentage" formulation. As summarized by the Congressional Research Service, committee reports typically outline the need and purpose of legislation and may include statements of legislative intent to guide both the executive branch in implementation and the judiciary in interpretation. *See Committee Reports: Required Contents*, Congressional Research Service Products (Library of Congress) (Jan. 22, 2008).

By contrast, the Conference Report, H.R. Conf. Rep. 101-955, primarily reconciles differences between the House and Senate versions and describes how those differences were resolved. Its focus is on the compromise text rather than on restating all underlying policy judgments that were already addressed in the committee reports. A conference report is just the final, official version of a compromise bill that only lists the specific legal text and the formal steps the House and Senate must take to pass it. *Conference Reports and Joint Explanatory Statements*, CONGRESS.GOV (Jun. 11, 2015), https://www.congress.gov/crs-product/98-382. In that light, the Conference Report's silence on the "top of the field" requirement is most reasonably understood as reflecting acceptance, rather than rejection, of the House Judiciary Committee's previously articulated intent.

Accordingly, USCIS respectfully understands H.R. Rep. 101-723 to remain the controlling statement of congressional intent on this point. That understanding is reflected in 8 C.F.R. § 204.5(h)(2), which requires "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." We conclude noting the Petitioner has failed to demonstrate that our most recent decision dismissing his appeal was based on an incorrect application of law or policy.

And finally, portions of the Petitioner's motion brief are drafted in a manner that is intended for a federal court rather than to an administrative appellate body. As those concepts do not apply to this office, we will not address those arguments.

In his 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 motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

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.