U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40052479

Date: JULY 7, 2026

Motions on Administrative Appeals Office Decision

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

The Petitioner, an airline pilot and aviation consultant, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as an alien with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate "sustained national or international acclaim" and extensively document recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

U.S. Citizenship and Immigration Services (USCIS) denied the petition, concluding that the Petitioner did not meet the requested category's initial evidentiary requirements. On appeal, we affirmed the decision of the Director of the Texas Service Center. *See In Re: 37346480* (AAO Apr. 8, 2025). The matter returns to us on the Petitioner's combined motions to reopen and reconsider. He contends that we misapplied law and disregarded evidence.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that he has not satisfied the category's initial evidentiary requirements. We will therefore dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish that our prior decision misapplied law or policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, regulations limit our scope of review to the prior decision. 8 C.F.R. § 103.5(a)(1)(i), (ii) (referring to "the prior decision" and "the latest decision in the proceeding"). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

A. The Evidentiary Criteria

Unless a petitioner documents their receipt of "a major, international recognized award," *see* 8 C.F.R. § 204.5(h)(3), they must submit documentation meeting at least three of the ten evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i-x).[1] Our prior decision found that the Petitioner did not satisfy any of the requirements that he claimed. On motion, he submits additional evidence and continues to maintain that he meets the following three evidentiary criteria:

- Membership in associations in his field that require outstanding achievements of their members, as judged by recognized national or international experts;
- Performance in a leading or critical role for organizations with distinguished reputations; and
- Commandment of a high salary or significantly high remuneration in relation to others in his field.

See 8 C.F.R. § 204.5(h)(3)(ii), (viii), (ix).

To meet a requirement, the Petitioner's evidence must objectively satisfy the parameters of the applicable regulatory description. *See generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual. "[N]either USCIS nor [the] AAO [Administrative Appeals Office] may unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5." *Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (citation omitted).

1. Membership in Associations

This criterion requires "[d]ocumentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner previously submitted a copy of his airline transport pilot certificate from the U.S. Federal Aviation Administration (FAA). Our prior decision found that he did not demonstrate that the certificate reflects membership in the FAA or required outstanding achievements as judged by experts to obtain.

On motion, the Petitioner acknowledges that the FAA is a government regulatory agency, not a professional organization. But he asks us to accept his materials as "comparable evidence" meeting this criterion. *See* 8 C.F.R. § 204.5(h)(4). He argues that the membership-in-associations criterion does not readily apply to his occupation "due to the unique structure of the commercial aviation industry – where elite professional standing is conferred almost exclusively through rigorous federal licensure rather than traditional association membership."

[1] If these requirements do not "readily apply" to a petitioner's occupation, the petitioner may submit "comparable evidence" to establish their eligibility. 8 C.F.R. § 204.5(h)(4).

The Petitioner, however, raises his comparable-evidence argument in these proceedings for the first time. "A motion to reconsider based on a legal argument that could have been raised earlier in the proceedings will be denied." *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Also, the Petitioner's comparable-evidence argument exceeds the scope of our review, which is limited to the issues decided in our prior decision. *See* 8 C.F.R. § 103.5(a)(1)(i), (ii) (referring to "the prior decision" and "the latest decision in the proceeding").

Further, even if we could consider the Petitioner's comparable-evidence argument, he has not submitted evidence of the purported inapplicability of the membership-in-associations criterion to his occupation. *See, e.g., Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 190 (D.N.J. 2021) ("To avail herself of § 204.5(h)(4), [the petitioner] needed to first show that one of the (h)(3) criteria was not readily applicable to her field.") Counsel asserts that the criterion at 8 C.F.R. § 204.5(h)(3)(ii) does not readily apply to the Petitioner's occupation. But counsel's assertion is not evidence. *See Matter of M-K-*, 29 I&N Dec. 556, 569 (BIA 2026) ("[S]tatements of counsel are not evidence.") The Petitioner also submits additional evidence regarding the purported "elite status" that his pilot certificate confers. But that evidence does not demonstrate, or even discuss, the purported inapplicability of the membership-in-associations criterion to his occupation. Thus, the Petitioner has not established that he meets this evidentiary criterion through comparable evidence.

2. The Remaining Claimed Evidentiary Criteria

Even if the Petitioner satisfied the remaining two evidentiary requirements that he claims to meet, he would not qualify for the requested immigrant visa category. *See* 8 C.F.R. § 204.5(h)(3) (requiring a petitioner to meet at least three evidentiary criteria). We therefore need not reach and hereby reserve consideration of his additional evidence and arguments regarding his purported performance in a leading or critical role for distinguished organizations and claimed commandment of a high salary or significantly high remuneration in relation to others in his field. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

B. Final Merits Determination

Because the Petitioner has met less than three initial evidentiary requirements, we also need not make a final merits determination on the petition. *See Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

The Petitioner's motions do not demonstrate his satisfaction of the requisite number of evidentiary requirements for the requested immigrant visa category. We will therefore affirm our appellate decision.

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.