U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40852109

Date: JULY 9, 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.

Through its Service Center Operations (SCOPS), USCIS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had received a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider. The Petitioner bears the burden of proof to demonstrate by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), any new facts and documentary evidence must demonstrate eligibility for the required immigration benefit at the time the application or petition was filed.

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 and we will dismiss those that do not. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). And finally, a motion to reopen that does not satisfy the regulatory requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

The Petitioner's appeal only directly contested two regulatory criteria (judging, and his performance in a leading or critical role), as well as the final merits determination. Within this motion, the Petitioner argues his eligibility under the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). But a review of his appeal brief does not contain any reference to this regulatory requirement. He therefore forfeited that claim, and he cannot revive it in a motion to reopen as issues not raised on appeal are deemed waived. *Matter of R-A-N-*, 29 I&N Dec. 739, 740 (BIA 2026) (citing *Matter of P-B-B-*, 28 I&N Dec. 43, 44 n.1 (BIA 2020)). A filing party cannot cure their failure to preserve an argument in a previous stage of the same proceedings through a post-adjudicative motion. *Philipp v. Stiftung Preussischer Kulturbesitz*, 77 F.4th 707, 709–10 (D.C. Cir. 2023). As it relates to the membership criterion, he cannot now raise new facts and support them with additional evidence in this motion to reopen. The proper venue for these arguments was in his appeal or in a new petition filing.

What's more, his appeal brief also did not contest the contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), only mentioning it in passing under his final merits determination argument. Issues mentioned to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. *See 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) and finding when a filing party mentions an issue without developing an argument, the issue is waived). "A party waives an argument by failing to present it in its opening brief or by failing to develop [its] argument—even if [its] brief takes a passing shot at the issue." *Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) (alterations in original). As such, we will not consider this waived issue in this motion to reopen.

Next, he addresses the requirement for "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." 8 C.F.R. § 204.5(h)(3)(viii). In the motion to reopen the Petitioner advances the same arguments he presented before SCOPS as it relates to [redacted] while also referring to the same evidence. That is not a qualifying claim for a motion to reopen that mandates "new facts."

But setting that aside, an issue remains unresolved that prevents the Petitioner from meeting all of this criterion's requirements. SCOPS determined that the record lacked evidence demonstrating a distinguished reputation for [redacted] or the [redacted] The Petitioner failed to adequately address the reputation of those organizations in his appeal, but he now attempts to revisit that issue for both entities in this motion to reopen. However, this filing is not meant to serve as a means for the Petitioner to improve upon the eligibility aspect that he failed to address in a meaningful way in his appeal, especially those that were directly addressed in the denial decision. We will not address these claims as he relies on the same evidence he presented before SCOPS and he does not assert any new facts in support of the motion to reopen.

For the Petitioner's judging experience, he asserts the evidence he previously provided from the [redacted] "states it is executed by individuals involved in the review process and that Petitioner [sic] agreed to assist in the assessment—present-tense participation. Under the preponderance standard, this is more likely than not proof of judging." He makes this argument because both SCOPS and this office found the record lacking of evidence that he had actually performed as a judge of the work of others in his field, rather than simply being invited to perform that

work. This requirement to demonstrate he had actually performed the judging work derives from USCIS policy that states: "The petitioner must show that the person has not only been invited to judge the work of others, but also that the person actually participated in the judging of the work of others in the same or allied field of specialization." *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual.

But we do not agree that the Confidentiality Agreement the Petitioner refers to conveys that he has already performed work as a judge. It repeatedly reflects it is a prospective document through the language in the document that includes:

- "AND WHEREAS I will, in the course of the execution of my duties as aforementioned . . . ."
- "NOW THEREFORE I hereby undertake that, in the review of all research proposals/progress reports . . . ."
- "I will treat all information contained in the research proposals/progress reports, reviewer reports and panel discussions in the strictest of confidence and will not disclose, publish . . . ."
- "I will not do or allow anything to be done which might compromise the interest of the [redacted] . . . ."
- "I will not use the information and/or any intellectual property contained in those research proposals/progress reports for any reason . . . ."
- "I will not participate in a review process where a (perceived, potential or actual) conflict of interest exists. Should there be doubt about an apparent conflict of interest, I will advise the [redacted], who will then indicate whether participation in the review process is permissible or not."

Additionally, a confidentiality agreement is generally recognized as a prospective document designed to govern the disclosure of protected information prior to collaboration. At any rate, this does not have the potential to change the outcome under this criterion. *See Matter of Coelho*, 20 I&N Dec. at 473.

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 cites to the *Matter of Chawathe* decision alleging the judging evidence we discussed above identified him "as a Technical Advisor who 'agreed to assist . . . in the assessment of research proposals,' and stating that only individuals 'involved in the review process' sign. Discounting this probative, agency-originating document for lack of additional formalities required more than a preponderance." However, we have already debunked the idea that the [redacted] Confidentiality Agreement is a document one signs after performing the work.

For his final motion to reconsider claim, while it is apparent that he's discussing the judging criterion, what is not clear is how he alleges that the appellate dismissal was legally incorrect when he states:

> **Policy Manual Guidance (document form not mandated).** While editor attestations or review logs can be probative, neither 8 C.F.R. § 204.5(h)(3)(iv) nor the Policy Manual prescribes those formats. Officers must weigh credible, relevant, probative evidence. Where confidentiality limits disclosure, an agency-issued reviewer agreement acknowledging proposal assessment is acceptable proof. Requiring specific document types elevated the bar beyond regulation/policy.

(Emphasis in original). We have already quoted from the USCIS Policy Manual that reflects the requirement that the Petitioner has already performed the judging work and that he provide probative evidence to support that contention. Beyond that, the Petitioner's allegation of error here is not discernible and we will not address that issue any further.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, he has not established eligibility. On 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 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.