U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43626712

Date: JULY 20, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, an executive for a news organization, 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.

U.S. Citizenship and Immigration Services (USCIS) denied the petition, concluding the Petitioner did not establish, as required, either a one-time achievement or that she met at least three of the ten initial evidentiary criteria for this immigrant classification. 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.

I. LAW

A. The Extraordinary Ability Classification

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if: they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the country to continue working in the area of extraordinary ability; and their entry into the United States would substantially benefit the country. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can provide "initial" evidence of a one-time achievement (that is, a major, internationally recognized award) or documentation that they meet at least three of the ten criteria listed at 8 C.F.R.

§ 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles). Where a petitioner demonstrates that they meet these "initial" evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that they are among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas,* 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step analysis of extraordinary ability "consistent with the governing statute and regulation").[1]

B. Motion Requirements

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.

II. ANALYSIS

The issue before us on motion is whether the Petitioner has demonstrated our decision to dismiss her appeal was based on a misapplication of law or policy and was incorrect at the time we issued the decision. Although the Petitioner has stated reasons for reconsideration, the record does not establish that our appellate decision was based on an incorrect application of law or policy at the time we issued our decision. Accordingly, we will dismiss the motion for the reasons discussed below.

A. The AAO's Decision

In our decision dismissing the Petitioner's appeal, we agreed with USCIS' determination that she satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(vi) and (viii) by submitting evidence showing her authorship of a scholarly article and her leading or critical role for the [redacted] in China. In addition, contrary to USCIS' conclusion, we determined that the Petitioner satisfied a third criterion by providing evidence she fulfilled the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) through her service as a reviewer for the '[redacted]' Accordingly, we proceeded to a final merits determination, wherein we concluded that the totality of the evidence did not show the Petitioner had achieved sustained national or international acclaim and demonstrate that she is among the small percentage at the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

[1] USCIS should use a two-step analysis to evaluate the evidence submitted with the petition to demonstrate eligibility for classification as an individual with extraordinary ability. *See generally 6 USCIS Policy Manual* F.2(B), https://www.uscis.gov/policy-manual. To establish eligibility, the petition must demonstrate that the individual has sustained national or international acclaim and that their achievements have been recognized in the field of expertise, indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor. *Id.*

Our appellate decision acknowledged the Petitioner's participation in the [redacted] the *Xinhua* article which was not about her, her position at [redacted] her service as a reviewer for the [redacted] her scholarly article in *Journal of News Research*, and the letter of support she submitted from an assistant professor of accounting at the [redacted] We concluded that while the record shows that the Petitioner has contributed to [redacted] success and growth in China, for which she has received accolades from within [redacted] the totality of her evidence did not reach the threshold of establishing, by a preponderance of the evidence, that she has achieved sustained national or international acclaim as one in the small percentage at the very top of her field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

B. Motion to Reconsider

On motion, the Petitioner contests the correctness of our appellate decision based on what she contends is "a significant intervening judicial precedent" which "vacated the legal validity of 'the final merits determination' and 'two-step analysis.'" She argues that in January 2026, the United States District Court for the District of Nebraska issued a decision in *Mukherji* v. *Miller*, No. 4:24-CV-3170 (D. Neb. Jan. 28, 2026), that invalidated USCIS' two-step final merits determination framework as unlawfully adopted without notice and comment rulemaking and ordered USCIS to approve the petitioner's petition. The Petitioner provides a copy of the decision and asks us to consider this ruling when evaluating her petition, apply the legal standards as interpreted by the court, and approve her petition.

Here, in contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow a decision of a United States district court. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Moreover, while we may consider the court's reasoning when it is properly before us, unpublished opinions are not considered binding precedent. *See Suchite-Salguero v. Att'y Gen. United States*, 147 F.4th 355, 359-60 (3d Cir. 2025) ("[W]e have cautioned over and over again that non-precedential opinions carry little to no weight for future cases."); *Wang v. Holder*, 569 F.3d 531, 538 n.5 (5th Cir. 2009); *cf. Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993) (considering the reasoning of district court decisions). Accordingly, we conclude our appellate decision was not erroneous in its analysis of the instant visa petition under the current two-step review framework provided in *Kazarian* and that we are not bound by the ruling of *Mukherji* v. *Miller* in the instant case. *See Kazarian v. USCIS*, 596 F.3d at 1115. *See also Matter of Price*, 20 I&N Dec. 953, 955 (Assoc. Comm'r 1994) (holding that performance at the major league level may frequently help to establish the athlete meets several of the listed criteria at 8 C.F.R. § 204.5(h)(3); however, an alien's extraordinary ability must be demonstrated by sustained national or international acclaim).

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Id.* at 954-55 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability"); *Amin v. Mayorkas*, 24 F.4th at 394 (stating that extraordinary ability is such an elite level of accomplishment); *Lapteva v. Schuurmans*, No. 8:24CV83, 2025 WL 815087, at *1 (D. Neb. Mar. 10, 2025) (stating that EB-1 visa are intended to be available to only an exceedingly small amount of individuals with extraordinary ability).

Based on the foregoing discussion, the Petitioner has not demonstrated that we misapplied law or USCIS policy in our prior decision dismissing her appeal, nor has she established that our decision

was incorrect based on the evidence in the record at the time of our decision. *See* 8 C.F.R. § 103.5(a)(3). Accordingly, we will dismiss the motion to reconsider.

III. CONCLUSION

The Petitioner's motion to reconsider has not established that our previous decision was based on an incorrect application of law or policy, or that it was incorrect 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.