U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42001447

Date: JUN. 02, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, an athlete, sports competitor, and entrepreneur in the field of rally racing, 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 (EB-1) 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 that he met the initial evidence requirements for this classification by satisfying at least three of the ten evidentiary criteria set forth in the regulations. We dismissed a subsequent appeal. The matter is now before us on a combined motion 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.

In our appellate decision, we concluded that the Petitioner did not establish his eligibility as an individual of extraordinary ability because he did not demonstrate that he met at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). We agreed with SCOPS that the Petitioner did not meet the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (iv), and (v), pertaining to memberships, judging, and original contributions, respectively. We disagreed with and withdrew SCOPS' conclusion that the Petitioner had met the criteria pertaining to performance in a leading or critical role (viii) and having commanded a high salary (ix). We reserved the issues of whether he met the criteria for lesser awards (i) and published material (iii).[1] On motion, the Petitioner maintains that he meets all of the initially claimed criteria.

[1] Because the Petitioner could not satisfy at least three of the initial criteria required to demonstrate his extraordinary ability, we did not need to reach, and therefore reserved, these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(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 have the potential to change the outcome).

The Petitioner states that "reopening is requested in the alternative [of a motion to reconsider] to ensure proper evaluation of the existing record under the correct legal framework and to address material mischaracterization and incomplete weighing of the evidence." However, the Petitioner has not provided new facts to establish that we erred in dismissing his appeal. Because he has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. The motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

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). As with the motion to reopen, our review is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The Petitioner makes several claims contesting the correctness of our prior decision. First, he claims that we misapplied the final merits determination described in *Kazarian vs. USCIS*, 596 F.3d 1115 (9th Cir. 2010), and "effectively re-weighed each evidentiary category in isolation"—an approach which, he asserts, "collapses the two-step analysis and conflicts with USCIS policy requiring a holistic review of the record."

The Petitioner's argument here is misplaced. In dismissing his appeal, we reviewed the evidence submitted and explained why it did not satisfy the requirements of each evidentiary category. We further explained that since he had not satisfied the required initial evidentiary criteria, we would not be providing the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20.

Second, the Petitioner contends that we "improperly elevated the evidentiary burden beyond the regulation by effectively requiring a level of fame and recognition approaching global celebrity." He asserts that we discounted certain evidence[2] related to his "competitive achievements, awards, media coverage, and expert testimony" because it was "not sufficiently broad" and, therefore, "impose[d] an extra-regulatory standard." The Petitioner further instructs that "[t]he correct inquiry is whether the record establishes, more likely than not, that the petitioner is among the small percentage at the top of the field—not whether the petitioner is a household name outside the field."

The standard of proof that governs this proceeding is a preponderance of the evidence. That means a petitioner must show what is claimed is "more likely than not" or "probably true." *Matter of Chawathe*, 25 I&N Dec. at 375-76. The Petitioner does not indicate how we misapplied the standard, and he provides no basis for his argument beyond his disagreement with our decision. Therefore, we

[2] We note that our decision did not discuss evidence he cites relating to awards, prizes, or media coverage, as we reserved issues concerning the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (vi).

find his argument unpersuasive. *Cf. Giday v. INS,* 113 F.3d 230, 234 (D.C. Cir 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support).

Third, the Petitioner claims that our "analysis reflects unduly narrow interpretations of several regulatory criteria, contrary to the text of 8 C.F.R. § 204.5(h)(3) and USCIS policy guidance." He provides the following assertions concerning the criteria at 8 C.F.R. § 204.5(h)(3)(i)(ii), and (iv).

Although we reserved the issue of whether the Petitioner met the criterion concerning awards and prizes (i), he revisits his previous contention, stating that our "approach suggests an elevated requirement that awards be globally famous in the general public, which is not the regulatory standard." Regarding his claimed memberships (ii), he states that we "did not adequately account for the merit-based nature of such memberships and the field-specific framework governing eligibility." The Petitioner has not provided a basis for either of his stances here. He does not identify where we incorrectly applied law or policy in our appellate decision or explain how the decision was incorrect based on the evidence in the record at the time of the decision.

Concerning the criterion related to judging (iv), the Petitioner stresses that "USCIS policy recognizes judging may occur in non-academic, non-panel contexts where the petitioner evaluates the work or performance of others in the field. A narrow reading limited to formal competition panels is inconsistent with policy and the criterion's text." The USCIS Policy Manual provides that a 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.[3] Documentation of the person's peer review work might include a copy of a request from a journal to the person to do the review, accompanied by evidence confirming that the person actually completed the review.[4] This guidance and the plain language of the regulation imply a formal designation of "a judge" in a judging capacity, either on a panel or individually pursuant to 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner states on appeal that the "record shows structured evaluation of other athletes and aspiring professionals through formalized instruction, assessment, and selection." The record shows that the Petitioner has worked as the owner and instructor at an off-road school where he has trained and provided mentorship to students. The record, however, does not contain evidence demonstrating he was invited to serve and completed service as a judge of the work of others. *Id.* Because the record did not contain sufficient evidence to demonstrate that the Petitioner served as a judge at the time of our decision, we correctly determined he did not satisfy this criterion.

Regarding his claimed original contributions (v), the Petitioner reiterates his assertion that our "analysis appears to demand a higher threshold than the regulation and policy require." He states that "USCIS policy does not require that contributions 'change the field,' only that they be of major significance in the field." He does not, however, cite any instance in which our decision evaluated whether his contributions "change the field." Instead, we evaluated whether the evidence demonstrated his original work constitutes major, significant contributions to the field.[5]

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[3] *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1), https://www.uscis.gov/policy-manual.
[4] *Id.*
[5] *Id.*

Fourth, the Petitioner claims that we "improperly discounted independent expert testimony as 'opinion'" and did not provide a reasoned explanation or analysis for "discounting probative expert evidence . . . ." The Petitioner characterized our evaluation of these letters of support as "arbitrary and capricious." However, our decision provided a thorough explanation for how letters submitted in support of the petition were considered, including why even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an athlete who has made original contributions of major significance to the field. *Cf. Visinscaia v. Beers*, 4 F.Supp.3d 126, 134–35 (D.D.C. 2013) (concluding that our decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

Fifth, the Petitioner indicates that we did not consider comparable evidence. He states he was "effectively penalized" for "presenting field-appropriate evidence rather than traditional-style evidence, contrary to the comparable evidence provision." He does not, however, indicate what evidence was submitted to be considered comparable and for which element of eligibility he submitted such evidence, nor does he explain how this issue relates to any deficiency in our appellate decision.

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 to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner's contentions in his current motion merely reargue facts and issues we have already considered in our previous decisions. *See, e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

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.