U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43316308

Date: JUNE 17, 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 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 warranted an approval when considering the totality of the evidence. We dismissed a subsequent appeal. The matter is now before us on motion to reopen. 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 (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). 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. A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

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." *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence to have the potential to change the outcome).

A motion to reconsider must: (1) state the reasons for reconsideration, (2) be supported by any pertinent precedent decision to establish that our prior decision was based on an incorrect application of law or policy, and (3) establish that our prior decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider that does not satisfy

these requirements must be dismissed. 8 C.F.R. § 103.5(a)(4). 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).

This filing contains several aspects that weigh against the Petitioner, even before factoring in his actual claims within the brief. First and most importantly, on the Form I-290B the Petitioner indicated this was a motion to reopen and he made no effort to identify the filing as a motion to reconsider or as a combined motion to reopen and reconsider, but contrary to that, the brief requests that we reopen and reconsider our decision to dismiss the appeal. Additionally, the Petitioner did not organize the brief into a cohesive manner, much less to identify which of his claims should be considered under the motion to reopen (i.e., new facts supported by evidence) and which should be evaluated under a motion to reconsider (i.e., that we misapplied the law based on the record as it existed at that time). Instead, he presented 35 pages of intermixed and recursive arguments. Even though it appears appropriate to summarily dispose of this filing, we will evaluate the propriety of our decision to dismiss the appeal. That decision included two independent bases for the finding that the Petitioner was not eligible for this restrictive immigration benefit. First that he did not demonstrate sustained acclaim, and second that he had not supported his claims with extensive documentation.

First, we address what appear to be his claims that may fall under a motion to reopen. The Petitioner asserts that his national or international acclaim predated 2022 (when he came to the United States) and he supports that claim with several support letters. But this is not a new fact that he did not previously claim, as he presented achievements occurring before 2022 in an effort to demonstrate his acclaim under the ten regulatory criteria in the initial filing through his judging. As this claim does not meet the requirements for a motion to reopen, we will not consider it as part of his claims under that type of filing. 8 C.F.R. § 103.5(a)(2). His remaining motion to reopen claim pertains to those same support letters he offered before SCOPS. Within this motion brief, he states he is resubmitting the letters, but he does not state what facts are new and it appears that he is simply reoffering the same facts about the letters that he provided before. In the motion, he only lists the letter's author before presenting a lengthy blocked quote from the letter. Here, he fails to meet the requirements of a motion to reopen in which the filing party "must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2).

Now to what appears to be the Petitioner's motion to reconsider arguments, the first of which is that he demonstrated that his national and international acclaim should be considered as sustained under the preponderance of the evidence.

In the motion, the Petitioner points to a simple statement we made acknowledging his assertions in the record. Within our statement providing background on the Petitioner and his field of endeavor, we stated: "The Petitioner states that he began playing organized footvolley in his home country of Brazil . . . . [where] he won several amateur and professional footvolley titles and established a popular club for training footvolley athletes." From that nondescript statement mirroring the Petitioner's assertions, he then concludes: "This shows that the agency agrees that the Petitioner had achievements in the field before coming to the United States, which contradicts the argument that the Petitioner has not proven sustained a career [sic] in the field, this action from the agency violates APA." But that is not the case as the Petitioner mistook our acknowledgement for endorsement.

We did not discuss evidence corroborating his assertions because he did not submit objective evidence of titles he earned before coming to the United States and instead, he offered letters describing his titles. But the regulation and the petition's instructions each informed the Petitioner that his initial evidence requirements included evidence he was the recipient of prizes or awards to include accolades he claims before coming to the United States. A testimonial letter from someone in the industry that is not corroborated by the primary evidence of the prize or award falls short of meeting the Petitioner's burden of proof that he received the specified award. *See* 8 C.F.R. § 103.2(b)(2) (indicating only where the filing party demonstrates that primary evidence does not exist or cannot be obtained may they rely on secondary evidence, and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits or letters).

Unsupported conclusory letters from those in the Petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized. As a result, the Petitioner has not shown that our appellate decision—in particular the sustained acclaim portion—was incorrect based on the evidence in the record of proceedings at the time of the decision, which is a requirement for a motion to reconsider. 8 C.F.R. § 103.5(a)(3). Ultimately, the Petitioner has not shown that he has sustained the requisite level of acclaim. In determining whether an alien has enjoyed "sustained" national or international acclaim, USCIS should ensure that such acclaim must be *maintained*. *See generally* 6 *USCIS Policy Manual* F.2(A)(1), https://www.uscis.gov/policy-manual.

A motion to reconsider is the proper filing for arguing a change in the law. *Gonzalez Hernandez v. Garland*, 9 F.4th 278, 286 (5th Cir. 2021) (discussing the appropriate venue for filing a motion based on a change in the law as a motion to reconsider); *Salim v. Holder*, 728 F.3d 718, 721 (7th Cir. 2013); *Rodas-Orellana v. Holder*, 780 F.3d 982, 985–86 (10th Cir. 2015) (finding that a change in case law is not considered new evidence for purposes of a motion to reopen removal proceedings; rather, it is a motion for reconsideration that asks the agency to consider a change in the law); *Wu v. INS*, 436 F.3d 157, 163 (2d Cir. 2006). *Also see Matter of O-S-G-*, 24 I&N Dec. 56, 60 (BIA 2006) (finding the moving party must rely on a motion to reconsider to show how a change in law materially affects a prior decision); *Matter of Ramos*, 23 I&N Dec. 336, 338 (BIA 2002); *Matter of J-J-*, 21 I&N Dec. 976, 977 n.1 (BIA 1997).

The Petitioner notes what he perceives as a change in the law after a recent district court decision, issued after his petition denial, concluded that the final merits determination process was not proper. The opinion the Petitioner references is *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."

The Petitioner further argues that he submitted support letters that we did not consider. But we did review and consider the letters in our decision dismissing the appeal, even if we did not list each one. In our decision on the appeal we stated:

> We agree that SCOPS appears to have overlooked some support letters and aspects of others. These materials not only attest to the Petitioner's playing and coaching abilities but also praise his training and teaching skills. For example, one letter-writer, a Brazilian professional soccer player, stated that he trained with the Petitioner in the United States and left "in top form." But the materials do not ultimately explain how the Petitioner ranks among the small percentage at his field's very top. *See* 6 *USCIS Policy Manual* F.2(B)(2) ("[T]he petitioner must explain the significance of the submitted evidence, and how it demonstrates that the person has achieved sustained national or international acclaim and recognition in their field of expertise.")

The presumption of regularity applies in the immigration context, and it is presumed that an agency has reviewed all of the evidence before it. *Biden v. Texas*, 597 U.S. 785, 811 (2022); *INS v. Miranda*, 459 U.S. 14, 18 (1982). That presumption is applied before USCIS and an alien attempting to establish that an agency violated their right to due process by failing to consider relevant evidence is a heavy burden a filing party must overcome when alleging the agency did not review the evidence. *E.g.*, *Cruz v. Bondi*, 146 F.4th 730, 738–40 (9th Cir. 2025). Here, the Petitioner must demonstrate that USCIS ignored and did not consider their evidence in the decision on his appeal. This burden demands "that a petitioner present 'clear, affirmative evidence' that the agency did not review the evidence before it." *Id.* at 740 (quoting *Gov't of Guam v. Guerrero*, 11 F.4th 1052, 1060 (9th Cir. 2021)); *Al-Hela v. Biden*, 66 F.4th 217, 236–37 (D.C. Cir. 2023). A petitioner must first show what record evidence *in particular* was supposedly ignored or misconstrued by the agency, and such a showing cannot be vague, nor can it gesture broadly toward swaths of evidence—it must be clear and affirmative. *Cruz*, 146 F.4th at 740 (citing *Gov't of Guam*, 11 F.4th at 1060); *Colindres v. U.S. Dep't of State*, 71 F.4th 1018, 1025 (D.C. Cir. 2023).

Furthermore, a petitioner must explain why that evidence was not only material, but also "highly probative or potentially dispositive." *Cruz*, 146 F.4th at 740 (quoting *Cole v. Holder*, 659 F.3d 762, 772 (9th Cir. 2011)). But here the Petitioner has not met that burden and he has not demonstrated that the evidence that was not specifically discussed would have affected this case's outcome (i.e., that he was prejudiced by the lack of discussion). *Id.* (quoting *Najmabadi v. Holder*, 597 F.3d 983, 991 (9th Cir. 2010)). *See also Rhoa-Zamora v. INS*, 971 F.2d 26, 34 (7th Cir. 1992), *as modified on denial of reh'g* (Nov. 4, 1992); *Safari Club Int'l v. Haaland*, 31 F.4th 1157, 1177–78 (9th Cir. 2022). And the Petitioner has not achieved that in his motion to reconsider, here.

Also, simply because the Petitioner has one view of what the letters demonstrate, that is not a conclusion that we must share. A trier of fact should consider the issues presented and provide a sufficiently reasoned analysis. They are not however, required to interpret evidence in the manner a petitioner advocates. *Matter of Landers*, 29 I&N Dec. 240, 245 (BIA 2025); *Matter of M-D-C-V-*, 28 I&N Dec. 18, 32 (BIA 2020); *Matter of J-C-H-F-*, 27 I&N Dec. 211, 217 (BIA 2018); *Matter of Z-Z-O-*, 26 I&N Dec. 586, 592 (BIA 2015 *Matter of D-R-*, 25 I&N Dec. 445, 454–55 (BIA 2011) (explaining that an triers of fact may make reasonable inferences from direct and circumstantial evidence in the record as a whole and is not required to accept a respondent's account where other plausible views of the evidence are supported by the record). The final determination of whether evidence satisfies the requirements of a regulation or meets the burden of proof lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding that the appropriate entity to determine eligibility is USCIS); *see also Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (2012).

Next, the Petitioner argues there is a lack of a rational connection between the facts and the decision because he offered evidence he was the [redacted] we demonstrated with articles from major media the importance of his ranking and titles. We have shown with independent 6 different publications [the National Footvolley Association] is the most recognized association in the United States."

Regarding receipt of the most valuable player recognition, although the issue was not previously addressed, the media coverage for those accolades was originally on a foreign language website, and the site does not appear to be an English version sponsored and translated by the original media source. This raises questions with regard to the manner in which the evidence was translated. Moreover, it was not presented in its original form and accompanied by a certified translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). This diminishes the value of the material.

But beyond that, the record lacks coverage in media in the United States that might demonstrate the award was recognized at the requisite level in the country where he earned the recognition. Also, being named the most valuable player in a niche sport does not automatically provide one with recognition at a national level in the manner the Petitioner asserts. Also, simply because an association that was founded in 2017 may represent a niche game at a national level does not necessarily mean those accolades are the type that place him among those at the top of the field. Further, the National Footvolley Association is not the only entity that represents the sport in the United States. And we already addressed the shortcomings relating to the foreign-sourced media coverage of his most valuable player awards.

The Petitioner also alleges that we ignored new evidence he offered on appeal. However, because the governing regulations and SCOPS' request for evidence provided the Petitioner with both formal notice and a reasonable opportunity to submit the necessary documentation, we normally decline to consider new evidence proffered for the first time on appeal. Under 8 C.F.R. § 103.2(b)(11), all requested evidence must be submitted together at one time.

It is well-established that an administrative appellate body will not review or consider evidence first introduced on appeal when the filing party was put on notice of the requirement and given a meaningful opportunity to provide it before the denial. *Matter of Furtado*, 28 I&N Dec. 794, 801–02 (BIA 2024) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *Matter of Izaguirre*, 27 I&N Dec. 67, 71 (BIA 2017) (same); *Matter of Jin*, 29 I&N Dec. 441, 449 (BIA 2026) (citing *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988)). Additional precedents reinforce this restriction, noting that the appellate process is not a venue for the primary submission of evidence. *See Matter of N-P-A-*, 29 I&N Dec. 347, 349 (BIA 2025) (quoting *Matter of German Santos*, 28 I&N Dec. 552, 561 n.4 (BIA 2022), *aff'd*, No. 22-2072, 2025 WL 2694101 (3d Cir. Sept. 22, 2025) ("[w]e do not consider new evidence for the first time on appeal")); *Matter of D-J-L-*, 29 I&N Dec. 485, 489 (BIA 2026); *Matter of D-G-E-A- & N-G-G-E-*, 29 I&N Dec. 570, 577 n.5 (BIA 2026) (citing *Matter of Fedorenko*, 19 I&N Dec. 57, 73–74 (BIA 1984)).

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not identified new facts as mandated by the regulation. 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.