U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38000348

Date: JUNE 20, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a business consultant and executive, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality 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.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that the Petitioner has satisfied at least three of the 10 initial evidentiary criteria, as required. 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, 375-76 (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). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

We incorporate by reference the analysis in our prior decision. By way of summation, and in relevant part, SCOPS advised the Petitioner of deficiencies in the record by sending a request for evidence (RFE). The RFE requested, in relevant part, the following:

- Documentation of the Petitioner'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, as required by the criterion at 8 C.F.R. § 204.5(h)(3)(ii);
- Evidence of the Petitioner's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field, as required by the criterion at 8 C.F.R. § 204.5(h)(3)(v); and

- Evidence that the Petitioner has commanded a high salary or other significantly high remuneration for services, in relation to others in the field, as required by the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

More specifically, SCOPS requested, in relevant part, "[t]he section of the association's constitution or bylaws, which discuss the criteria for membership for the [P]etitioner's level of membership," "[o]bjective, documentary evidence of the significance of the [P]etitioner's contribution to the field," "testimony and/or support letters from experts," "[c]opies of the [P]etitioner's W-2 or 1099 forms for years in which the [P]etitioner has received a high salary in the field of endeavor [or] similar foreign tax documents," and "[m]edia reports of notably high salaries earned by others in the [P]etitioner's field."

SCOPS further provided a reasonable time for the Petitioner to provide this evidence, the maximum period of time permitted by the regulation at 8 C.F.R. § 103.2(b)(8)(iv). Upon the Petitioner's response to the RFE, SCOPS denied the petition, concluding that the record did not satisfy those and other initial evidentiary criteria. We then dismissed the Petitioner's appeal, determining that the record did not satisfy at least three of the 10 initial evidentiary criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x), including the criteria at 8 C.F.R. §§ 204.5(h)(3)(ii), (v), and (ix).

Now, on motion to reopen, the Petitioner submits additional evidence related to the criteria at 8 C.F.R. §§ 204.5(h)(3)(ii), (v), and (ix), which she asserts satisfies at least three of the 10 initial evidentiary criteria required at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). The evidence includes bylaws of an association of which the Petitioner is a member, printouts from publicly available websites, publicly available media publications, opinion letters, an educational syllabus, payroll and tax information, market surveys, and wage data. The Petitioner generally describes the evidence she submits on motion to reopen as "unavailable at the time of the initial decision." However, she does not elaborate—nor does the record otherwise clarify—why the evidence she submits for the first time on motion to reopen was unavailable at the time of the initial decision as she asserts, other than that some of the evidence did not exist at the time she must establish eligibility and, thus, it improperly presents a new set of facts.

More specifically, the evidence—which is either publicly available or apparently obtainable upon request—that the Petitioner submits on motion to reopen bears dates either prior to SCOPS' March 2024 RFE and June 2024 decision, indicating it was or should have been available when SCOPS requested it, or it otherwise bears dates and pertains to information after the Petitioner filed the underlying Form I-140, Immigrant Petition for Alien Workers, in 2023, impermissibly presenting a set of facts that did not exist at the time of filing. A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, which was either reasonably available to the Petitioner or it presents a set of facts that did not exist at the time of filing, we will not consider it for the first time on motion to reopen. *See Matter of Furtado*,

28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record); 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. Therefore, the Petitioner has not established new facts that would warrant reopening the proceeding.

Because the Petitioner has not established new facts that would warrant reopening the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.