U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43494778

Date: JUN. 23, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, a singer, 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 that although the Petitioner has satisfied at least three of ten initial evidentiary criteria, the record did not establish that the Petitioner is one of that small percentage who has risen to the very top of the field. We dismissed a subsequent appeal. The matter is now before us on a 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.

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. We indicated that USCIS decided that the Petitioner had satisfied five claimed criteria relating to awards, published material, judging, display, and commercial successes. However, upon our de novo review of the record, we concluded that the Petitioner appeared to have met only three criteria relating to published material, judging, and display. Furthermore, because the regulation at 8 C.F.R. § 204.5(h)(3) only requires fulfillment of three criteria, we determined that we did not need to discuss the awards and commercial successes categories under the first step of the analysis framework. *See, e.g., Churyumov v. U.S. Citzenship & Immigr. Servs.*, No. 2:18-CV-00841-RAJ, 2019 WL 5802041, at *3 (W.D. Wash. Nov. 7, 2019), *aff'd*, No. 2:18-CV-00841-RAJ, 2019 WL 5802041 (W.D. Wash. Nov. 7, 2019) (finding that

regardless of the plaintiff's claim of meeting seven criteria, the plaintiff met the threshold evidentiary burden when he met at least three criteria); *Nagaiah v. Allen*, 784 F. Supp. 3d 798, 819 (E.D. Pa. 2025) (stating that the petitioner's challenge to USCIS' finding at step one does not move the needle because USCIS determined that he prevailed at step one).

The Petitioner asserts that "the reserved criteria which included [the Petitioner's] receipt of multiple national awards and commercial success as a singer, were significant in showing the sustained national acclaim that he maintained in Bangladesh and put him among the few who have achieved such success." Although we reserved a determination of his eligibility for the awards and commercial successes criteria under the first step of the evidentiary analysis, we specifically indicated that "we will evaluate the totality of the evidence, including the documentation relating to other criteria he has claimed, in the context of the final merits determination." In fact, in the second step of our analysis, we discussed the evidence relating to both the criteria he satisfied as well as the criteria he did not, such as the Petitioner's awards, memberships, and commercial successes. While he claims that we "improperly treated material as 'unnecessary,'" our decision contradicts the Petitioner's allegation because we considered and addressed the totality of the Petitioner's evidence in the final merits determination. *See, e.g., Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *23 (D. Neb. Sept. 12, 2025) (finding that USCIS considered both the criteria that it had determined that plaintiff satisfied at step one and the criterion that she had not).

Furthermore, the Petitioner reargues claims and references evidence, such as articles and letters, which we already considered in our prior decision. *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"); *see also Medtronic, Inc. v. Daig Corp.*, 789 F.2d 903, 906 (Fed. Cir. 1986) ("We presume that a fact finder reviews all the evidence presented unless [the fact finder] explicitly expresses otherwise."). We will not re-adjudicate the petition anew.

Finally, the Petitioner contends that "the decision repeatedly evaluates each category of evidence in isolation . . . without explaining how these elements, when considered cumulatively, fail to establish sustained national acclaim." Although we addressed the evidence under each criterion and explained how the Petitioner did not show his sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and his achievements have been recognized in the field through extensive documentation, we also considered and addressed the evidence in the totality. *See, e.g., Biyani v. United States Citizenship & Immigr. Servs.*, No. 4:22CV3032, 2022 WL 17326211, at *9 (D. Neb. Nov. 29, 2022) (finding that the decision sufficiently explained why, when the evidence was considered as a whole, the plaintiff did not qualify for an extraordinary ability visa); *Churyumov*, 2019 WL 5802041, at *3, *aff'd*, 2019 WL 5802041 (upholding USCIS' decision that a review of all of the evidence did not show that the plaintiff had risen to the very top of his field or that he has enjoyed sustained acclaim); *Nagaiah*, 784 F. Supp. 3d at 820-21 (finding USCIS considered the totality of the evidence and found it did not show that the petitioner had sustained national or international acclaim, nor did it show that he had risen to the top of his field).

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 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.