U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43519208

Date: JUN. 30, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

USCIS denied the petition, concluding that the record did not establish that the Petitioner qualifies for EB-2 classification and, therefore, did not establish that he is eligible or otherwise merits a national interest waiver. The Petitioner then filed an appeal, which we subsequently dismissed. The matter is now before us on a 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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon review, we will withdraw USCIS' decision and remand the matter for entry of a new decision consistent with the following analysis.

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).

In our prior decision, we acknowledged that the Petitioner initially stated that he qualified for EB-2 classification as an individual of exceptional ability.[1] However, we noted that the initial required evidence to demonstrate his eligibility for EB-2 classification was not present in the record and we therefore dismissed the appeal. If all required initial evidence is not submitted with the benefit request

[1] In denying the petition, the Service Center Operations (SCOPS) erroneously determined that the Petitioner does not qualify as an advanced degree professional when the Petitioner did not claim eligibility as an advanced degree holder. Further, SCOPS did not evaluate whether the Petitioner qualifies as an alien of exceptional ability.

or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence. 8 C.F.R. § 103.2(b)(8)(ii).

On motion, the Petitioner asserts that he submitted the initial evidence in support of the EB-2 classification as an individual of exceptional ability. He explains that he "submitted a comprehensive petition package weighing 11 pounds, containing over 1,000 pages of documentary evidence." In support, he submits a copy of a United Parcel Service, Inc.'s shipping label as proof of delivery of an 11-pound package, along with a copy of his initial filing of the petition.

Here, the record suggests that more likely than not, the Petitioner submitted the initial evidence in support of the EB-2 classification as an individual of exceptional ability. While this evidence was not in the record at the time of adjudicating the appeal, the Petitioner resubmits this evidence on motion and the record now contains the required initial evidence. As SCOPS has not evaluated this evidence, we will remand the case. SCOPS should determine whether the Petitioner meets at least three of the regulatory criteria related to exceptional ability and, if necessary, fully explain how the evidence in the record does or does not establish each criterion. If the evidence does satisfy at least three of the criteria, SCOPS should then conduct a final merits determination to decide whether the evidence in its totality shows that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field and would, as a result, meet the exceptional ability standard as a threshold issue prior to considering eligibility for a national interest waiver.

ORDER: USCIS' decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.