U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41644201

Date: MAR. 05, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, an arts, drama and music teacher/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).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner had not established eligibility for the underlying EB-2 visa classification and that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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).

The appeal was dismissed because the Petitioner did not address or contest SCOPS' specific findings regarding the underlying EB-2 visa classification. On motion, the Petitioner asserts, in part, that the prior decision erred in concluding that the record did not establish eligibility for a national interest waiver. The Petitioner filed the underlying petition as an immigrant petition under section 203(b)(2) of the Act seeking classification as an individual of exceptional ability, with a request for a national interest waiver. However, in support of the motion, the Petitioner cites several regulatory provisions relating to evidentiary standards for individuals of extraordinary ability. Specifically, the Petitioner references regulation language applicable to O nonimmigrant visas and extraordinary ability immigrant petitions. The regulations cited by the Petitioner govern different visa classifications and are therefore not controlling here.

Furthermore, a motion to reopen must state the new facts to be provided in the reopened proceeding and must be supported by affidavits or other documentary evidence. 8 CFR § 103.5(a)(2). The petitioner submits certificates to "demonstrate his extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation." The Petitioner's arguments and evidence rely on legal standards applicable to different visa categories rather than presenting new facts for the prior decision. Because the Petitioner relies on regulatory provisions that are not applicable to the classification sought and does not present new facts supported by documentary evidence, the Petitioner has not demonstrated that reopening the proceeding is warranted.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen 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.