U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42554023

Date: MAY 18, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner is a business legal consultant[1] seeking 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.

Service Center Operations (SCOPS) denied the petition and dismissed a subsequent motion, concluding that although the Petitioner satisfied at least three of the ten initial evidentiary criteria, after a final merits analysis, she did not establish that she had sustained national or international acclaim and that she is among the small percentage at the very top of the field of endeavor. We dismissed a subsequent appeal, concluding that upon de novo review, the Petitioner did not satisfy at least three of ten evidentiary criteria, as previously determined by SCOPS, and that a final merits determination was therefore not warranted. Nevertheless, we affirmed SCOPS' decision which was based on a final merits determination, concluding that the Petitioner did not establish that she has sustained national or international acclaim and is among the small percentage at the very top of the field of endeavor. The matter is now before us on 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 be supported by pertinent precedent to 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.

[1] The Petitioner has been registered as a lawyer in Brazil since 2009 and as a foreign legal consultant for Brazilian law in Florida since 2024.

On motion, the Petitioner contests the correctness of our adverse findings concerning each individual criterion, but she does not address our final merits determination where we discussed the criteria within the broader context of extraordinary ability, explaining how the totality of the evidence falls short of establishing that the Petitioner has sustained national or international acclaim and is among the small percentage at the very top of her field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022) (upholding USCIS' two-step review process as "consistent with the governing statute and regulation").

To summarize, we determined that the record contains sufficient evidence demonstrating that the Petitioner judged the work of others in her field and authored scholarly articles. However, we found that the Petitioner did not establish that her experience judging students' final papers at two universities in Brazil garnered wide attention from the field such that she was recognized outside of those universities and impacted or influenced her field. And while we acknowledged that the Petitioner authored an article for learned persons in her field, we pointed out that her material was published in 2003, more than 20 years ago, and does not show that she has sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act.

We also discussed the Petitioner's contributions to a book, a legal brief she filed with the Supreme Federal Court in Brazil, and an article she had published in *Revista Academica*, an online magazine that allows writers to submit their own original articles for publication on the site. However, we observed that the Petitioner did not compare her authored works to those of others who are recognized as already being at the top in her field to provide context and we found that her legal brief was not shown to have been in professional or major trade publications or other major media. We also found that the article in *Revista Academica* lacks the characteristics of a scholarly article because it does not reflect original research, experimentation, or philosophical discourse; it lacks footnotes, endnotes, or bibliographies; and it does not demonstrate its pre-publication review by experts in the legal and business fields.

Thus, even though we determined that the Petitioner satisfied the elements of the judging and scholarly articles criteria, we nevertheless concluded that neither her judging experience nor her publication record is consistent with having a "career of acclaimed work" as contemplated by Congress. *See* H.R. Rep. No. at 59 and 56 Fed. Reg. at 30704. Importantly, we noted that meeting these criteria does not automatically place one at the top of the field, concluding that the Petitioner did not establish that her judging experience and publication record demonstrate that she is among the small percentage at the very top of her field. *See* 8 C.F.R. §204.5(h)(2).

Beyond the criteria that the Petitioner satisfied, we also considered six additional criteria – awards, membership, published material about the individual, original contributions, leading or critical role, and high salary – to determine whether the totality of the evidence demonstrates eligibility. We then concluded that the evidence neither fulfills the requirements of any of the six listed criteria nor contributes to an overall finding that the Petitioner has sustained national or international acclaim and is among the small percentage at the top of her field.

Starting with the awards criterion, we discussed the Petitioner's receipt of a Motion of Appreciation from a client and the Guiness Book of World Record award given to one of the Petitioner's clients for the [redacted]. Regarding the membership criterion, we considered the Petitioner's registration as a lawyer with the Brazilian Bar Association and as a foreign legal consultant in Brazilian law with the Florida Bar as well as her membership in committees for the [redacted] However, we determined that neither receiving recognition from clients for her work nor the Petitioner's bar registrations and committee memberships resulted in sustained national or international acclaim or placed her among that small percentage who have risen to the very top of their field of endeavor.

We also addressed the criterion that requires evidence of published material about the individual. We pointed out that several of the submitted articles did not meet this criterion because they were not about the Petitioner or her work in the field, but rather only mentioned her and were instead about a 2002 Brazilian court case, while other articles lacked an author and were not published in professional or major trade publications or other major media. Regardless, we considered the evidence submitted in support of these criteria in our final merits determination, finding that the overall press coverage demonstrated through the submitted material did not establish that the Petitioner attained a level of success that reflects a career of acclaimed work in her field or that it is consistent with being among that small percentage who have risen to the very top of her field of endeavor.

As for the original contributions criterion, we discussed the Petitioner's presentation of a legal brief before the Supreme Federal Court of Brazil in 2003 and her role as one of five contributors to a book on tax law that she did not author and which sold 238 copies. However, we pointed out that the articles about the court case were published in 2003 and the only other recognition of the Petitioner's thesis stemmed from one university's use of that thesis as reference material for its law program. While we acknowledged that university's recognition of the Petitioner's thesis, we determined that neither the legal thesis nor the Petitioner's role as one of five book contributors reflects a career of acclaimed work in her field gaining national or international attention or distinguishing the Petitioner from others in the field. And while we also considered recommendation letters from the Petitioner's clients and previous employer, we pointed out that the letters lacked details showing the unusual influence or high impact of the Petitioner's contributions such that they can be deemed as rising to the level of major significance in the field or placing the Petitioner among that small percentage at the very top of her field of endeavor.

Finally, we addressed the two remaining criteria that the Petitioner claimed, concluding that she did not satisfy either the leading and critical role or the salary criteria. We found that despite the Petitioner's leading role in her three companies, none of the companies was shown to have a distinguished reputation. We also found that the Petitioner did not demonstrate that her leading roles in and contributions to her companies have been widely recognized in a manner that evidences a career of acclaimed work or placement among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). We determined that the Petitioner did not satisfy the salary criterion because the evidence she submitted, which included a website listing the average base salary for a lawyer in Brazil in 2024, did not offer a comparison between the Petitioner's remuneration

and that of others in occupations performing similar work.[2] We concluded that the Petitioner did not establish that her salary or remuneration is "significantly high" or that her earnings are comparable to those of individuals at the very top of the field.

In support of the motion, the Petitioner addresses only our adverse findings concerning the individual criteria but declines to address our analysis in the final merits determination, arguing that it is impermissible to make an adverse determination "based solely on a subjective merits assessment disconnected from the text of the regulation." In support of her assertions regarding "the application of extra-regulatory standard at the Final Merits Determination stage," the Petitioner cites a district court decision, *Mukherji v. Miller*, No. 4:24-CV-3170 (D. Neb. Jan. 28, 2026), deeming it "highly persuasive authority." We disagree with the Petitioner's reliance on this non-precedent decision.

First, the regulations pertaining to motions to reconsider expressly require that the filing party state the reasons for reconsideration and cite "any pertinent precedent decisions" to establish that the decision that is the subject of the motion was legally insufficient based on its incorrect application of law of USCIS policy. 8 C.F.R. § 103.5(a)(3). The Petitioner has not complied with this requirement.

Further, in contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow a decision of a United States district court. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Moreover, while we may consider the court's reasoning when it is properly before us, unpublished opinions are not considered binding precedent. *See Suchite-Salguero v. Att'y Gen. United States*, 147 F.4th 355, 359-60 (3d Cir. 2025) ("[W]e have cautioned over and over again that non-precedential opinions carry little to no weight for future cases."); *Wang v. Holder*, 569 F.3d 531, 538 n.5 (5th Cir. 2009); *cf. Matter of K-S-*, 20 I&N Dec. at 719 (considering the reasoning of district court decisions). Importantly, we note that the *Mukherji* decision was issued by a district court in Nebraska and is therefore outside of the Petitioner's jurisdiction, which is in Florida. For these reasons, we are not bound by the ruling of *Mukherji v. Miller* in the instant case and therefore our analysis of the instant visa petition under the current two-step review framework provided in *Kazarian* was not in error. *See Kazarian v. USCIS*, 596 F.3d at 1115.

As stated earlier, the Petitioner does not address the content of our final merits analysis and only contests our reliance on that analysis as a dispositive measure. As such, the Petitioner has failed to overcome the adverse findings in our final merits determination.

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

[2] Providing only average salaries does not offer a clear picture of the range of salaries earned by others similarly employed in Brazil.

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.