U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37501748

Date: MAY 20, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a scientific researcher, 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.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that she meets the initial evidence requirements for this classification, either through her receipt of a major internationally recognized award or by satisfying at least three of the ten evidentiary criteria set forth in the regulations. We dismissed an appeal and a subsequent motion to reopen. The matter is now before us on a combined motion to reopen and reconsider.

In our dismissal of the Petitioner's appeal, we determined that she did not demonstrate that she had a one-time achievement under 8 C.F.R. § 204.5(h)(3), nor did she provide evidence sufficient to demonstrate that she met at least three of the criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x); we therefore did not conduct a final merits analysis under Kazarian, reserving the issue.[1]

Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings—our dismissal of the motion to reopen. 8 C.F.R. § 103.5(a)(1)(ii).

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 combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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

[1] *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant did not otherwise meet their burden of proof).

record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). 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 dismissal of the Petitioner's motion to reopen, we explained that while the Petitioner presented assertions concerning her eligibility, she did not identify evidence to support her claims. We also referenced our decision to dismiss her appeal, which explained that new evidence that she submitted concerning awards could not be considered on appeal.[2] Our motion decision further explained that this evidence would also not be considered on motion, and that a motion following an adverse decision on an appeal should not act as a vehicle to introduce new eligibility claims for the first time. Our dismissal also explained that the requirement for "new facts" on motion to reopen pertains to new information associated with the eligibility claims a filing party presented to us in their most recent filing. The Petitioner's initial motion to reopen did not provide new facts to establish that we erred in dismissing the appeal, nor did it establish that our dismissal of the appeal was an incorrect application of law or policy at the time it was issued. Accordingly, the motion to reopen was dismissed.

The Petitioner's present combined motion to reopen and reconsider likewise does not provide new facts or evidence, nor does it identify any deficiency concerning the dismissal of her motion to reopen. The Petitioner reasserts her eligibility by citing previous arguments and resubmitting evidence previously included in the record.[3] The Petitioner also submits a paper that she co-authored which was published several months after the denial of her petition, which we cannot consider because evidence submitted on motion to reopen must establish eligibility at the time a petition is filed. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The Petitioner has not submitted new facts that that would warrant reopening of the proceedings and, therefore, has not met the requirements for a motion to reopen. 8 C.F.R. § 103.5(a)(2). 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, she has not met the requirements for a motion to reconsider. 8 C.F.R. § 103.5(a)(3). The combined motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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[2] Because the Petitioner was put on notice and given a reasonable opportunity to provide evidence to support her assertions through a notice of intent to deny, we explained we would not consider newly introduced evidence for the first time on appeal. *See* 8 C.F.R § 103.2(b)(11) (requiring all requested evidence be submitted together at one time together at one time); *Matter of Soriano* 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

[3] *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").