U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35684412

Date: MAY 22, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a business executive in the pomegranate industry, 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 he meets the initial evidence requirements for this classification, either through his receipt of a major internationally recognized award or by satisfying at least three of the ten evidentiary criteria set forth in the regulations. SCOPS further determined the Petitioner did not establish that his entry to the United States would offer substantial prospective benefits to the country. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and 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.

In our appellate decision, we determined that the Petitioner did not establish that he met the following claimed criteria at 8 C.F.R. § 204.5(h)(3)(iii) or (ix): 1), evidence of published material about the Petitioner in professional or major trade publications or other major media and 2), evidence that the Petitioner has commanded a high salary or other significantly high remuneration for services in relation to others in the field.[1] We reserved and did not address the remaining issues at (v) and (viii), advising that we had reviewed the record in its entirety and concluded that it did not support a finding

[1] On appeal, the Petitioner did not address or contest SCOPS' determination that he did not meet the criterion at 8 C.F.R. § 204.5(h)(3)(i), relating to his receipt of lesser nationally or internationally recognized awards or prizes for excellence in his field, nor did he address SCOPS' determination that he could not establish eligibility through "comparable evidence" under 8 C.F.R. § 204.5(h)(4). An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

that the Petitioner had established the acclaim and recognition required for the classification sought.[2] The Petitioner does not contest his eligibility under these criteria on 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).

On motion to reopen, the Petitioner submits documentation previously submitted, asserting that the evidence of record establishes his eligibility for the criteria at 8 C.F.R. § 204.5(h)(3)(iii) and (ix). The Petitioner's motion to reopen, however, focuses solely on his argument that our decision was erroneous based on the evidence of record; he does not identify new facts supported by probative evidence. Because the Petitioner has not submitted new facts that that would warrant reopening of the proceedings, he has not met the requirements for a motion to reopen. 8 C.F.R. § 103.5(a)(2). The motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

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 to reconsider, the Petitioner contests the correctness of our prior decision, asserting that we misinterpreted or did not correctly analyze certain evidence. Upon review, the evidence of record does not establish the Petitioner's eligibility under either 8 C.F.R. § 204.5(h)(3)(iii) or (ix).

Concerning whether the record contains evidence of published material about the Petitioner in professional or major trade publications or other major media relating to his work in the field for which he seeks classification, the Petitioner initially submitted documentation that included an excerpt from [redacted] a magazine that appears to be published by the [redacted] and which features congratulatory comments to entrepreneurs from the President of Azerbaijan; a translation shows that the president declared in 2017 that the 25th day of April each year would be celebrated as "Entrepreneur's Day" in the Republic of Azerbaijan. This excerpt, however, did not identify the Petitioner or discuss his work. The Petitioner also submitted an article published by

[2] We explained that, because the Petitioner did not meet two of the four claimed criteria, he could not meet the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 204.5(h)(3); therefore, detailed discussion of the two remaining contested criteria at 8 C.F.R. § 204.5(h)(3)(v) and (viii) could not change the outcome of the appeal. Similarly, because the Petitioner did not meet the initial evidentiary requirements, it was not necessary to determine whether the Petitioner's entry to the United States would offer substantial prospective benefits to the country under section 203(b)(1)(A)(iii) of the Act. *See 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 is otherwise ineligible).

Azerbaijan's [redacted] Executive Authority on its website discussing a visit between individuals involved in the country's agricultural industry—a group that included the Petitioner in his role as the chairman of the [redacted]—and [redacted] The record, however, did not include evidence to demonstrate that the website qualifies as either a professional or major trade publication or other major media for eligibility purposes under 8 C.F.R. § 204.5(h)(3)(iii).

As further evidence of published material about the Petitioner, he submitted documentation showing several instances of his presence in either televised or online media—news stories covering topics such as pomegranate cultivation, pomegranate products, and exports. The Petitioner stated that these news stories originated from channels such as [redacted] As explained in the dismissal of the Petitioner's appeal, the record did not include adequate support for his claim that the stories appeared in major media or qualifying media. In evaluating whether a submitted publication is a professional publication, major trade publication or other major media, relevant factors include the intended audience (for professional and major trade publications), and the relative circulation, readership or viewership (for major trade publications and other major media). The Petitioner did not provide evidence that allows for an evaluation of these factors.

On motion to reconsider, as evidence that the referenced channels are considered major media, the Petitioner includes a previously submitted document that he authored summarizing information about the channels. He also submits a webpage from [redacted] depicting answers to a survey [redacted] assessing the most popular channels for news consumption in 2023, which shows [redacted] as a news source for 47% of 1500 respondents. Also included is information about the channels published by the channels themselves. The [redacted] webpages discuss the history of the channel, while the [redacted] webpages provide a brief overview of the channel's content; declare it [redacted]" and describe it as "[a] leader in the production of content television and a major player in the domestic film industry." The record does not include corroborating evidence such as viewership figures for these and related channels to demonstrate that either [redacted] or [redacted] is considered major media. Concerning [redacted], a single survey and self-reported rankings are not sufficient to demonstrate that the channel qualifies as major media under the criterion at 8 C.F.R. § 204.5(h)(3)(iii). Unsupported assertions regarding stature or ranking are insufficient to show that a medium qualifies under this criterion.[3] A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

We note that, even if we were to consider the stories as published in qualifying media under this criterion—which we do not—only two of the screenshots depicted for the stories show the logos of the channels referenced, while others include handwritten notations of a channel below the screenshot and are not otherwise identifiable. While the Petitioner submitted translations of pages of text which are preceded by these screenshots of purported interviews, these pages do not contain identifying information to show that they are transcripts from specific broadcasts of interviews with the Petitioner, such as the web addresses or other information depicting the origins of the transcripts. The record

[3] *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of major media).

does not include identifying information, such as the dates and authors of the stories, as required for eligibility purposes under 8 C.F.R. § 204.5(h)(3)(iii).

On motion to reconsider, concerning whether the record contains evidence to establish that the Petitioner has commanded a high salary or other significantly high remuneration for services in relation to others in his field, the Petitioner reiterates arguments previously made on appeal and points to the evidence of record to establish eligibility. As explained in the dismissal of the Petitioner's appeal, the evidence does not demonstrate that the Petitioner has received high compensation or remuneration for services relative to others in comparable positions within his field for eligibility purposes under 8 C.F.R. § 204.5(h)(3)(ix).

In response to a request for evidence, the Petitioner explained that he earned a higher salary than other individuals within the agrarian industry in Azerbaijan for a period from 2019 to 2021. He submitted documentation indicating that his monthly salary for services rendered to the entity [redacted] as its "director, enterprise" was 6,133.90 manat from September 2019 to at least July 2021. The Petitioner also submitted data from the State Statistical Committee of the Republic of Azerbaijan for the average monthly salary of salaried employees in the field of agriculture, forestry, and fishing, showing average monthly salaries of 371.40 manat and 433.50 manat for 2020 and 2021, respectively. As discussed in our appellate decision, it was not clear how the Petitioner's salary as a director—also described in the record as "chairman"—of an enterprise was comparable to the average monthly salaries of all salaried employees in the field. The Petitioner did not offer any comparative data for managerial or executive positions in his field or industry. Without that evidence, he did not support his claim that he commanded a high salary in relation to others in the field.

On motion, the Petitioner asserts that the dismissal of his appeal "does not specifically analyze why the official Azeri document related to the salaries of employees in Agriculture, Forestry, and Fishing is not probative enough and is insufficient to demonstrate the Petitioner's clearly very high salary as compared to his peers in the industry." However, as reiterated above, our appellate decision explained why the average salaries of workers in the Petitioner's field are not comparable to the Petitioner's earnings in a specific managerial role; all employees in the Petitioner's field cannot be considered collectively as the Petitioner's peers, as their roles and earnings are necessarily varied, and the Petitioner did not submit evidence of the salaries of other executives in roles comparable to his own. Indeed, on motion, the Petitioner acknowledges the inclusionary nature of the data that he submitted, stating the following:

> Moreover, the Azeri government's official statistical [data] encompassed all positions—including the executive ones—in its report. Hence, when comparing the Petitioner's income to the average income [in] Agriculture, Forestry, and Fishing, his remuneration is certainly high.

The report does not differentiate between executive positions and others represented in the data. And although the Petitioner, throughout the record, has emphasized his leadership role, he has not submitted specific data for "his peers in the industry"—such as chairpersons, directors, or other executives—but for an average of individual salaries reflective of a wide swath of roles within his industry. This broad range of occupational data for an average of salaries for an entire industry is not

sufficient to demonstrate comparability to the Petitioner's specific role within the industry. We note that relevant caselaw has confirmed that "in relation to others in the field" should be interpreted as allowing comparisons to those employed in the same occupation at a similar level.[4] We consider the quality and caliber of the evidence to determine whether a particular regulatory criterion has been met.[5]

The Petitioner, on motion, also reiterates an argument based on guidance in the USCIS Policy Manual. The Petitioner references, in part, the following USCIS Policy Manual section:

> For entrepreneurs or founders of a startup business, officers should consider evidence that the business has received significant funding from government entities, venture capital funds, angel investors or other such funders in evaluating the credibility of submitted contracts, job offer letters, or other evidence of prospective salary or remuneration for services.[6]

This section provides guidance for how to evaluate documentation provided by entrepreneurs or startup founders as evidence of prospective salaries or remuneration for services. In these scenarios, evidence of funding or investments may lend credibility to, for example, a job offer letter's statement regarding a salary to be paid. The Petitioner, however, refers to government funding alone as evidence of his receipt of high salary or remuneration. On motion he states the following (quoted as written):

> Additionally, when considering whether Petitioner's commanded a high salary, USCIS/AAO should have also considered whether Petitioner's "the business has received significant funding from government entities, venture capital funds, angel investors…" See 6 USCIS-PM F.2(B)(1). However, although on appeal, Petitioner submitted evidence that the United States, that it gave him over $40,000.00 in grants to purchase equipment so he could grow more of his new pomegranate breed, AAO did not consider this evidence as it pertains to Petitioner's high salary.

Here, the Petitioner appears to refer to funds received by his company in 2018 from [redacted] an organization acting on behalf of the Agricultural Support to Azerbaijan Project through a contract with the United States government. Evidence of these funds consists of a purchase order with [redacted] and an attached project plan to provide the Petitioner's company with funds to improve the company's pomegranate production, as well as his initial application. We note that his business's receipt of government funding does not, in and of itself, demonstrate that he has received a high salary or remuneration. The Policy Manual guidance provides, instead, that an entrepreneur or startup founder's receipt of such funds should be viewed in conjunction with other documentation of record to establish the credibility of evidence of *prospective* salary. Here, it appears the Petitioner is asking that we consider the $40,000 in grants, in addition to the Petitioner's

[4] *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

[5] *See* 6 *USCIS Policy Manual* F.2(B)(1).

[6] 6 *USCIS Policy Manual* F.2(B)(1).

monthly wages of 6,133.90 manat from 2019 to 2021, as evidence of his renumeration those years. However, since the grants were issued to the company in 2018 to purchase equipment, any resulting benefit to wages in ensuing years should have already been included in the wage evidence presented for 2019 through 2021. Thus, the Petitioner's assertion that the [redacted] grants demonstrate his high salary from 2019 to 2021 is without merit. The record does not include sufficient evidence to establish that the Petitioner has received a high salary or remuneration for services significantly above others in similar occupations within 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. 8 C.F.R. § 103.5(a)(3). Therefore, the 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.