U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42395936

Date: MAY 28, 2026

Motion on Administrative Appeals Office Decision

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

The Petitioner, a veterinarian, seeks 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.

U.S. Citizenship and Immigration Services (USCIS) denied the petition, concluding that the Petitioner did not establish eligibility for classification as an alien of extraordinary ability. We dismissed a subsequent appeal. The matter is now before us on a combined motion 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.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(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).

It is unclear what new fact the Petitioner is asserting on motion, although the Petitioner discusses *Mukherji* v. *Miller*, No. 4:24-CV-3170 (D. Neb. Jan. 28, 2026); a new decision that was issued by the United States District Court for the District of Nebraska. Here, 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 Moreover, while we may consider the court's reasoning when it is properly before us, unpublished opinions are not considered binding precedent.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 United States*, 147 F.4th 355, 359-60 (3d Cir. 2025) ("[W]e have cautioned over and over again that non-precedential opinions carry little to no weight for future cases."); *Wang v. Holder*, 569 F.3d 531, 538 n.5 (5th Cir. 2009); *cf.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. 715, 719 (BIA 1993) (considering the reasoning of district court decisions). Therefore, although the Petitioner submits a new fact on motion, the evidence would not change the outcome of our prior decision. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new

evidence have the potential to change the outcome). Accordingly, we conclude that the motion to reopen does not state new facts, supported by documentary evidence, that establish proper cause to reopen the proceedings. *See* 8 C.F.R. § 103.5(a)(l)(i); (a)(2). Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision.

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). As stated above, the scope of a motion is limited to the prior decision, therefore, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii).

The Director determined the Petitioner meets the evidentiary criteria related to judging and authorship of scholarly articles. 8 C.F.R. §204.5(h)(3)(iv) and (vi). However, the Director further concluded that the Petitioner did not meet the criteria for membership or performing in a leading or critical role at 8 C.F.R. §204.5(h)(3)(ii) and (viii). On appeal, we determined that the Petitioner met the additional criterion of performing in a leading and critical role but did not establish eligibility in a final merits determination. On motion, the Petitioner contends that we erred by "discounting" evidence in the final merits determination that was "expressly accepted to satisfy the regulatory criteria. . .without identifying new deficiencies or explaining why that same evidence was no longer persuasive."

The Petitioner's contention relies on a misunderstanding of *Kazarian* and USCIS policy. In determining whether a petitioner has established extraordinary ability, we use a two-step analysis to evaluate the evidence. *See Kazarian v. USCIS*, 596 F.3d at 1119-20.[1] As described in the *USCIS Policy Manual*, the evidence evaluated in the first step analysis is also reviewed in the second step, where the officer must determine whether the person is one of that small percentage of the who has risen to the very top of the field of endeavor, and that the person has sustained national or international acclaim.[2] Objectively meeting the regulatory criteria in the first step does not establish that the person in fact meets the requirements for classification as a person with extraordinary ability.[3]

Therefore, our analysis, in a final merits determination, as to whether the evidence—including evidence that demonstrates initial regulatory criteria—shows that the Petitioner meets the requirements for classification as a person with extraordinary ability, is a proper application of this framework. In fact, the *USCIS Policy Manual* provides the following example that relates to judging:

> Participating in the judging of the work of others in the same or an allied field of specialization alone, regardless of the circumstances, should satisfy the regulatory criteria in the first step of the analysis. However, the second step requires the officer to evaluate the person's participation to determine whether it was indicative of the person being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim.[4]

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[1] *See also generally* 6 *USCIS Policy Manual*, F.2(B), https://www.uscis.gov/policy-manual/.
[2] *See id.*
[3] *See id.*
[4] *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1).

This analysis reflects the proper process in which we, at step one, determine only if the evidence objectively meets the regulatory criteria and, at step two, consider whether the evidence in its totality demonstrates sustained national or international acclaim.

As stated above, the Petitioner contends that our decision did not explain why the evidence we "accepted to satisfy the regulatory criteria was later discounted at the final merits stage without identifying new deficiencies or explaining why the same evidence was no longer persuasive" and stated that our decision did not "articulat[e] a rational connection between the evidence and the denial." We first note that the Petitioner does not provide any specific examples of this claimed error. Instead, upon review, we conclude that the appellate decision properly reviewed the evidence in the record and explained its deficiencies. For example, our decision specifically speaks of the evidence in the record regarding the Petitioner's authorship of scholarly articles. Although the evidence demonstrated she met the regulatory criteria related to the authorship of scholarly articles at 8 C.F.R. §204.5(h)(3)(vi), and the Petitioner contends that her research has been cited in multiple scholarly works, our decision states that "the record does not contain a citation record" and "the Petitioner did not provide evidence to attest that the citations to her work are high compared to other published research by veterinarians in her area of expertise." Therefore, as our decision explains, "the Petitioner did not demonstrate that her publication record is consistent with having a career of acclaimed work, sustaining national or international acclaim, and being among the small percentage at the very top of [her] field."

Similarly, our decision reviewed the evidence in the record as it relates to her judging roles. We concluded that although the evidence of her evaluating academic performance as a member of the "Thesis Defense Committee for the Veterinary Medicine Program" met the requirements under 8 C.F.R. §204.5(h)(3)(vi), the record did not include evidence that her history of judging set her apart from others in her field that would place her "among that small percentage who has risen to the very top of the field of endeavor." In addition, our decision analyzes the recommendation letters in the record. While we determine that they are "universal in their praise for the Petitioner," we concluded that they did not "contain sufficient information and explanation to show that she is viewed by the overall field, rather than by a solicited few, among the upper echelon or that she has garnered recognition on a national or international scale, consistent with being among the small percentage at the very top of the field of endeavor." Therefore, although this evidence was successful to establish that she participated as a judge of the work of others in her field per 8 C.F.R. §204.5(h)(3)(vi) or that she performed in a leading or critical role under 8 C.F.R. §204.5(h)(3)(viii), in a final merits determination, this same evidence did not demonstrate that the Petitioner is one of that small percentage who has risen to the very top of the field of endeavor, and that she has sustained national or international acclaim.

Disagreeing with our conclusions without showing that we erred as a matter of law is not a ground to reconsider our decision. *See Matter of O-S-G-*, 24 I&N Dec. at 58 (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). The Petitioner has not demonstrated how we erred in our application of law or USCIS policy in our appellate decision. Therefore, the Petitioner has not shown proper cause for reconsidering our decision on its appeal.

The Petitioner did not identify new facts, supported by documentary evidence, that establish proper cause to reopen the proceedings, and therefore, the Petitioner has not established eligibility for a

motion to reopen. 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 reopen is dismissed.

FURTHER 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 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.