U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39640050

Date: SEP. 25, 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 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, concluding that the Petitioner did not establish that he satisfied at least three of the ten initial evidentiary criteria and that the Petitioner did not establish his entry into the United States would offer substantial prospective benefits to the country. We dismissed a subsequent appeal, finding the Petitioner had not established he met the criteria at 8 C.F.R. §§ 204.5(h)(3)(iii), (ix), related to published material about the Petitioner in professional or major trade publications or other major media and evidence the Petitioner has commanded a high salary or other significantly high remuneration, respectively. We reserved both the Petitioner's arguments as to two additional grounds of eligibility he claimed under the criteria at 8 C.F.R. §§ 204.5(h)(3)(v), (viii), related original contributions of major significance in the field and performance in a leading or critical role in a distinguished organization or establishment, and whether the Petitioner's entry would offer substantial prospective benefits to the United States. We then dismissed the Petitioner's combined motion to reopen and reconsider, finding the Petitioner had not submitted new facts that would warrant reopening of the proceedings and did not establish our appellate decision was based on an incorrect application of law or policy. The matter is now before us on a second 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).

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

On motion, the Petitioner asserts he was "the subject of televised reports by Russia 1, the leading national broadcaster in Russia" and "featured on AzTV, a state-owned broadcaster and one of the top three most-watched television channels in Azerbaijan." In support of these claims, the Petitioner submits a largely illegible document from Mediascope indicating the audience share of Russian TV channels from the first half of 2024, background information on Mediascope, a partial transcript submitted to demonstrate a Russia 1 news segment highlighting the Petitioner's work, an AidData profile on media ownership in Azerbaijan, and a partial transcript submitted to demonstrate an AzTV news segment report on the Petitioner.

The two partial transcripts have previously been submitted in support of this criterion. In our appeal dismissal decision, we determined the partial transcripts submitted by the Petitioner did not include required information related to the date of the appearance, did not sufficiently identify the name of the broadcasters, and contained varying information regarding where the videos were broadcast. Similarly, in the previous combined motion to reopen and reconsider, we concluded the partial transcripts submitted by the Petitioner do not contain identifying information to demonstrate they are transcripts from the claimed video broadcasts of the Petitioner, as they did not include web addresses or other information detailing the origins of the transcripts or dates and authors, as required under the regulation. The previously submitted partial transcripts submitted on motion do not constitute new facts for the purposes of the instant motion. They do not overcome our prior finding that they do not comply with regulation requirements and lack identifying information to establish they are transcripts from the Russia 1 and AzTV appearances claimed by the Petitioner. As such, we need not consider whether the Petitioner has demonstrated that Russia 1 and AzTV constitute major media to conclude the Petitioner has not overcome our prior determination that he has not met this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

On motion, the Petitioner submits a previously submitted labor agreement that indicates the Petitioner, as an owner/founder and director, earns a salary of 6133,9 from the [redacted]; a previously submitted project proposal summary indicating the Petitioner is the owner of [redacted] LLC, incorporated in 2018; previously submitted evidence of receipt of 2018 USAID payments for agricultural assistance; letters from the Azerbaijan State Statistical Committee providing the average wage of employees and management under the category of "[a]griculture, forestry, and fishing," and indicating they cannot provide the average wage for specific positions; background information for WageIndicator; and an Azerbaijan platform of WageIndicator's average salaries for agriculture and fisheries managers. While the Petitioner acknowledges the lack of official comparative data to agricultural executives such as himself, he asserts he has provided the best available evidence and requests leniency in evaluating this criterion.

In our previous appeal and motion decisions, we determined the average salaries of workers in the Petitioner's field is not comparable to the Petitioner's described role as director and chairman, as "all employees in the Petitioner's field cannot be considered collectively as the Petitioner's peers" and "the Petitioner did not did submit evidence of the salaries of other executives in roles comparable to his own." Similarly, on instant motion, the submitted comparable wage documentation for both agriculture and fisheries managers and "[a]griculture, forestry, and fishing" employees and managers is not comparable to the Petitioner's role that has been characterized in the record as an owner/founder, executive director, and chairman. While we acknowledge the Petitioner's claims concerning his difficulties in obtaining sufficient information to demonstrate his eligibility under this criterion, his eligibility must be established by a preponderance of the evidence. And salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. The Petitioner must submit documentary evidence of the earnings of those in their occupation performing similar work at the similar levels to the Petitioner. *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); *Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-714 (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). Accordingly, the Petitioner has not overcome our previous finding and demonstrated his eligibility under this criterion.

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 he in their removal from the United States and possible ineligibility for future visas or other immigration benefits.