



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 25527965

Date: FEB. 10, 2023

Motion on Administrative Appeals Office

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

The Petitioner, a martial artist, 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.

The Director of the Texas Service Center denied the petition in November 2018, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal and five subsequent motions. The matter is again 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 combined motions.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence.<sup>1</sup> 8 C.F.R. § 103.5(a)(2). A motion to reconsider is based on an incorrect application of law or policy.<sup>2</sup> 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reopen and reconsider the denial of the petition. Instead, it is a motion to reopen and reconsider our most recent decision, the October 19, 2022, dismissal of the Petitioner's fifth motion. Therefore, we cannot consider new objections to the earlier

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<sup>1</sup> Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323, (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *Id.* at 110.

<sup>2</sup> The Board of Immigration Appeals (BIA) generally provides that a motion to reconsider asserts that at the time of the previous decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. The very nature of a motion to reconsider is that the original decision was defective in some regard. *See Matter of Cerna*, 20 I&N Dec. 399, 402 (BIA 1991).

denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

On motion, the Petitioner submits a statement, and no other evidence, asserting his eligibility for first preference classification as a martial artist of extraordinary ability. This statement is identical to the statement he submitted with his fifth motion. Furthermore, while the statement generally asserts his eligibility for an extraordinary ability visa, it does not explain or point to any factual, legal or policy error in our October 19, 2022 decision. As before, the Petitioner requests that we “advise what kind of documents [we] . . . accept to prove [his] case.” The Petitioner should review our prior five decisions, along with the Director’s November 2018 decision to understand the evidentiary deficiencies in the record.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown “proper cause” for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

Therefore, we will dismiss the Petitioner’s motion to reconsider because he does not establish that we erred in our October 19, 2022 decision. *See* 8 C.F.R. § 103.5(a)(3). In addition, we will dismiss his motion to reopen because he has not provided documentary evidence of new facts related to our prior decision. *See* 8 C.F.R. § 103.5(a)(2).

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.