



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

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

In Re: 27917006

Date: OCT. 2, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks classification as an individual of extraordinary ability in the arts. *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 Nebraska Service Center denied the petition, concluding the Petitioner did not establish that he satisfied the initial evidentiary requirements through evidence of a one-time achievement or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). We summarily dismissed the Petitioner's subsequent appeal concluding that he did not specifically identify any erroneous conclusion or law or statement of fact in the unfavorable decision as a basis for the 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).

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). 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.

In our decision summarily dismissing the Petitioner's appeal, we stated that his submission did not identify specifically any erroneous conclusion of law or statement of fact in the Director's decision.

Further, while the Petitioner indicated that a brief and/or additional evidence would be submitted to the AAO within 30 calendar days of filing the appeal, the record did not show that he submitted those materials within that period. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.2(a)(1)(v).

As noted above, review of any motion is narrowly limited to the basis for the prior adverse decision. Accordingly, we examine any new facts and arguments to the extent that they pertain to our summary dismissal of the Petitioner's appeal. Thus, the issue before us is whether we properly found that the Petitioner's appeal met the applicable requirements for summary dismissal under the regulation at 8 C.F.R. § 103.3(a)(1)(v).

On motion, the Petitioner provides additional evidence (pay stubs and a letter of support from his employer) addressing the Director's determination regarding his eligibility for classification as an individual of extraordinary ability under the evidentiary criteria at 8 C.F.R. § 204.5(h)(3), but he does not address our summary dismissal of the appeal.¹ He offers no new evidence or facts on motion to overcome the stated grounds for our summary dismissal decision. Moreover, he does not contend that our appellate decision was based on an incorrect application of law or USCIS policy or that it was incorrect based on the evidence in the record at the time of our decision.

The Petitioner has not established new facts relevant to our summary dismissal that would warrant reopening of the proceedings, nor has he shown that we erred as a matter of law or USCIS policy. Consequently, we have no basis for reopening or reconsideration of our appellate decision. Accordingly, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and his underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

¹ This evidence relates to the merits of the Petitioner's eligibility as an individual of extraordinary ability. His opportunity to contest the Director's denial decision on the merits of his extraordinary ability claim was on appeal. Absent new facts or evidence to change the outcome of our summary dismissal of the appeal, we need not render a determination on the merits of the underlying petition here.