



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

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

In Re: 34794874

Date: NOV. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a drug addiction counselor, 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, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Petitioner filed a combined motion to reopen and reconsider, which the Director dismissed. The matter is now before us on appeal under 8 C.F.R. § 103.3.

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). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. The implementing regulation at 8 C.F.R. § 204.5(h)(3) establishes the initial evidentiary criteria that a petitioner must satisfy.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, to assess whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The matter before us is the dismissal of the Petitioner's motion, rather than the previous denial of the underlying petition. Therefore, at this time we will not address the petition or the grounds for its denial.

In dismissing the Petitioner's motion, the Director stated: "The evidence submitted with the motion to reopen and reconsider does not establish that the decision was incorrect based on the evidence of record at the time of the initial decision." The Director did not provide any details to explain this summary conclusion. As a result, the Petitioner was not able to address any specific deficiencies on appeal.

The official having jurisdiction over a motion is the official who made the latest decision in the proceeding. 8 C.F.R. § 103.5(a)(1)(ii). In this case, the Petitioner filed a motion on a decision by the Director. Therefore, we do not have jurisdiction over the motion itself, and the proper course of action is to remand the matter to the Director.

The Director must issue a new decision, addressing the specific claims and arguments in the Petitioner's motion. If the Director determines that the evidence and assertions are deficient, then the Director must specifically identify those deficiencies and explain why the Petitioner's motion does not meet the requirements of a motion to reopen, a motion to reconsider, or both.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.