U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35772009

Date: JAN. 2, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner 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.

The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that she received a major, internationally recognized award, nor did she demonstrate that she met at least three of the ten regulatory criteria. We dismissed a subsequent appeal, and it is that appellate decision upon which the Petitioner files this motion to reopen. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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). According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), any new facts and documentary evidence must demonstrate eligibility for the required immigration benefit at the time the application or petition was filed. A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." 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).

In the Petitioner's appeal brief, she addressed both of the awards she discusses in the current motion to reopen. Our decision on that appeal addressed the topic and informed her that she could not present

new evidence for the first time in her appeal. And this motion—based on that same appeal—is no different. As it relates to a motion to reopen, the requirement for "new facts" pertains to new information associated with the eligibility claims a filing party presented to us in their most recent filing; in this case, in the Petitioner's appeal brief. A motion to reopen following an adverse decision on an appeal should not act as a vehicle to introduce new eligibility claims for the first time.

These two concepts (new facts versus new eligibility claims) are distinct and are not interchangeable. Filing parties must exhaust available administrative remedies (i.e., to present all foreseeable eligibility claims to the Director) and they cannot properly comply with agency procedural rules by simply failing to raise their claims depriving the lower body of the "opportunity to adjudicate their claims" and withholding their claims and presenting them to the appellate body for the first time in the appellate process. *Pakdel v. City & Cnty. of San Francisco, California*, 594 U.S. 474, 480 (2021).

This preclusion of presenting issues for the first time during the appeals process includes in any motion attendant to an appeal and we will not permit an end-run around our procedures by addressing an argument for the first time in a post-appellate motion. *Philipp v. Stiftung Preussischer Kulturbesitz*, 77 F.4th 707, 709–10 (D.C. Cir. 2023); *United States v. Campbell*, 26 F.4th 860, 875–76 (11th Cir.), *cert. denied,* 143 S. Ct. 95, 214 L. Ed. 2d 19 (2022); *Cf. Arroyo-Sosa v. Garland*, 74 F.4th 533, 543 (8th Cir. 2023) (quoting) *Rincon v. Garland*, 70 F.4th 1080, 1086 (8th Cir. 2023).

Considering the Petitioner's membership claims, she now indicates she is unable to obtain adequate supporting documentation, and we consider that claim to be forfeited.

Turning to the Petitioner's claims under the contributions of major significance criterion, our appellate decision noted she only presented assertions without adequate evidence to support the claims. Now on motion, she offers additional assertions, but she does not identify any supporting evidence to accompany those claims. This falls short of meeting the primary requirements for a motion to reopen.

And finally, in the appeal decision we concluded she did not satisfy the leading or critical role criterion. In this motion, the Petitioner mentions that regulatory requirement, but her discussion of the topic ends there and she instead expresses appreciation that we acknowledged one aspect relating to her and she discusses her family members.

On motion, the Petitioner does not present new facts, supported by documentary evidence. Accordingly, we will dismiss the motion to reopen. The Petitioner has not demonstrated that we should reopen the proceedings.

ORDER: The motion to reopen is dismissed.