U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42080365

Date: APR. 9, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a technology company,[1] seeks to classify the Beneficiary as an individual of extraordinary ability in "the field of technology entrepreneurship." *See* Immigration and Nationality Act (the Act) Section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). According to a February 2025 letter from its cofounder, the petitioning entity seeks to "continue to employ [the Beneficiary] as [its] Chief Technology Officer ('CTO')." This first preference classification makes immigrant visas available to aliens 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 meet the initial evidentiary requirements for this classification through presentation of evidence of either the Beneficiary's one-time achievement or showing that he meets at least three of the alternative evidentiary criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). The matter is now before us on appeal pursuant to 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 decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to aliens with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international

[1] According to the petitioning entity's website, it is [redacted] An [redacted] 2024 article posted on techcrunch.com explains that the petitioning entity [redacted] and it [redacted]"

acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those aliens in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then the petitioner must provide sufficient qualifying documentation showing that the beneficiary meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and authorship of scholarly articles). The regulation provides that if the criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the alien's occupation, then 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Where a petitioner meets these initial evidentiary requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows the beneficiary's sustained national or international acclaim and demonstrates that he or she 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).

II. ANALYSIS

A. Evidentiary Criteria

SCOPS concluded that the Petitioner did not establish the Beneficiary had received a major, internationally recognized award. On appeal, the Petitioner does not specifically challenge this finding, it has therefore waived this claim. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). As such, to meet the initial evidentiary requirements, the Petitioner must present evidence showing that the Beneficiary satisfies at least three of the criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). In the decision denying the petition, SCOPS determined that the Petitioner had satisfied two criteria by submitting "[p]ublished material about [the Beneficiary] in professional or major trade publications or other major media, relating to [his] work in the field for which classification is sought," as well as "[e]vidence that the [Beneficiary] has performed in a leading

or critical role for organizations or establishments that have a distinguished reputation." 8 C.F.R. § 204.5(h)(3)(iii), (viii).

On appeal, the Petitioner claims that it has presented evidence satisfying additional criteria, including the "participation . . . as a judge" criterion referenced under 8 C.F.R. § 204.5(h)(3)(iv). As relating to the Beneficiary's participation as a judge, SCOPS noted in the decision that the "evidence does not contain specific information, such as when the reviews occurred, whom []he evaluated, what standards of review were imposed, and the ultimate outcome of those reviews." The record does not appear to support this statement.

In its response to SCOPS' request for evidence (RFE), the Petitioner indicated that the Beneficiary "has judged the work of founders as investment candidates on behalf of [redacted]," a venture capital (VC) firm. It claimed that the Beneficiary "completed evaluation on behalf of this VC firm, based on industry criteria as to founder, market, and product-market-fit of early-stage innovation." As supporting evidence, the Petitioner presented materials confirming that in December 2024, the Beneficiary was on the panel of judges for [redacted] during which "students and entrepreneurs . . . [took] the stage and pitch[ed] to a panel of investors and YC[Y Combinator]-backed founder[s]." [redacted] materials indicate that the event involved "an exciting line up of early-stage founders participating in a pitch competition ($1k prize for the winner)!" The Petitioner offered email correspondence between [redacted] and the Beneficiary, sharing the "judging rubric for the event" and rules on how to score the competitors under the rubric, as well as thanking the Beneficiary's participation as a judge. The record includes a printout that appears to be the Beneficiary's scoring sheet according to the judging rubric, which includes numbers he awarded as "Final Score" for various categories. SCOPS did not discuss these materials in the decision. The materials appear to support the finding that the Petitioner has sufficiently shown that it meets the "participation . . . as a judge" criterion referenced under 8 C.F.R. § 204.5(h)(3)(iv) and has provided qualifying evidence satisfying the initial evidentiary requirements.

B. Final Merits Determination

Upon remand, if SCOPS concludes that the Petitioner has presented evidence satisfying the initial evidentiary requirements, SCOPS should consider the totality of the material provided in a final merits determination and assess whether the record shows the Beneficiary's sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of "the field of technology entrepreneurship." *See Kazarian*, 596 F.3d at 1115; *see also Visinscaia*, 4 F. Supp. 3d at 131-32; *Rijal*, 772 F. Supp. 2d at 1339.

According to the Beneficiary's resume, he founded the petitioning entity in January 2024, approximately a year and a half before filing the petition. *See* 8 C.F.R. § 103.2(b)(2) (providing that a "petitioner must establish that he or she [or it] is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication"). The evidence the Petitioner has offered in support of the petition all relates to the Beneficiary's role and work associated with the petitioning entity, and all the relevant events that the Petitioner claims confirm the Beneficiary's sustained national or international acclaim occurred within the year and a half time frame. Prior to his founding of the petitioning entity, the Beneficiary was an "intern," "research assistant," "coding instructor" and was in a "STEM fellowship." The Petitioner has not alleged, and

the record does not demonstrate, that these positions are in "the field of technology entrepreneurship." The Beneficiary's resume further reveals that he began undergraduate studies in computer science in September 2022, approximately a year before he founded the petitioning entity, and that he "dropped out" of school before completing his studies.

Given the structure of the regulation and the two-step analysis described in *Kazarian*, the satisfaction of the initial evidentiary requirements alone does not automatically or presumptively establish eligibility. In a final merits determination, SCOPS should evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim, that he is among the small percentage at the very top of "the field of technology entrepreneurship," and that his achievements have been recognized in the field through extensive documentation. Significantly, *USCIS Policy Manual* provides: "According to Black's Law Dictionary (11th ed. 2019), the definition of sustain is 'to support or maintain, especially over a long period of time' . . . [and to] 'persist in making (an effort) over a long period of time.'" *See generally* 6 *USCIS Policy Manual* F.2(A)(1) n.5, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2; *see also* Section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20.

III. CONCLUSION

Based on the issues we have discussed, including SCOPS did not fully address evidence the Petitioner had presented concerning the Beneficiary's "participation . . . as a judge," referenced under 8 C.F.R. § 204.5(h)(3)(iv), we are remanding the matter to allow SCOPS to consider all materials in the record and for the entry of a new decision. Upon remand, if SCOPS concludes that the Petitioner has presented evidence satisfying the initial evidentiary requirements, SCOPS should consider the totality of the material provided in a final merits determination and assess whether the record confirms the Beneficiary's sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of "the field of technology entrepreneurship." *See Kazarian*, 596 F.3d at 1115; *see also Visinscaia*, 4 F. Supp. 3d at 131-32; *Rijal*, 772 F. Supp. 2d at 1339.

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