U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41988032

Date: APR. 13, 2026

Appeal of Service Center Operations (SCOPS) Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree)

The Petitioner, a university, seeks classification for the Beneficiary as an individual of exceptional ability in the sciences or arts for employment as an assistant professor. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based second preference (EB-2) classification makes immigrant visas available to aliens with a degree of expertise significantly above that normally encountered in the sciences, arts, or business. *Id.* The Petitioner also seeks designation under 20 C.F.R. § 656.5, Schedule A, Group II.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not demonstrate the Beneficiary's eligibility for Schedule A designation. 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 dismiss the appeal.

I. LAW

Second preference immigrant visas are available for qualified individuals who are advanced-degree professionals or who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2) of the Act.

Every petition under this classification must include one of the following three documents: (1) an individual labor certification (Form ETA-9089) from the U.S. Department of Labor (DOL), (2) an application for Schedule A designation, or (3) documentation to establish that the beneficiary qualifies for one of the shortage occupations in the DOL's Labor Market Information Pilot Program. 8 C.F.R. § 204.5(k)(4)(i).[1]

[1] USCIS also has discretion to excuse job-offer and labor certification requirements if an EB-2 petitioner demonstrates that waiver of these U.S.-worker protections would be "in the national interest." Section 203(b)(2)(B)(i) of the Act. This petition, however, does not request a national interest waiver.

DOL has already determined that the United States lacks sufficient workers for certain occupations, as well as other jobs requiring exceptional ability. 20 C.F.R. § 656.5. DOL has pre-determined that the employment of foreign workers in these Schedule A jobs would not harm the wages or working conditions of U.S. employees in similar positions. *Id.* As prospective employers of Schedule A workers need not advertise their offered jobs to U.S. workers, DOL authorizes USCIS to adjudicate Schedule A applications in petition proceedings. 20 C.F.R. § 656.15(a). Thus, here, USCIS rules not only on the petition but also on its accompanying Schedule A application. *See* 20 C.F.R. § 656.15(e) (describing USCIS Schedule A determinations as "conclusive and final").

Schedule A, Group II designation requires that a petitioner submit evidence of the beneficiary's exceptional ability in the sciences or arts as demonstrated by widespread acclaim and international recognition from recognized experts in his or her field. 20 C.F.R. § 656.15(d)(1). In addition, the petitioner must provide evidence meeting at least two of seven criteria (for example awards, memberships, published material, and contributions). *Id.* at (i)-(vii). Beyond demonstrating widespread acclaim and international recognition, the documentation presented must show that the position the beneficiary has worked in the year prior to filing, and the one sought, both require an individual of exceptional ability. *Id.* As with any filing for an employment-based immigrant that requires an offer of employment, this petition must be accompanied by evidence that the prospective U.S. employer has the ability to pay the proffered wage. 8 C.F.R. § 204.5(g)(2).

II. ANALYSIS

The Petitioner indicated on Form ETA-9089, Application for Permanent Employment Certification, that it seeks to employ the Beneficiary as an assistant professor. The Form ETA-9089 states that the minimum requirements for the offered position are a doctorate degree in ethnomusicology and no training or experience.[2] The Petitioner also stated on the Form ETA-9089 that the offered position requires "exceptional ability in the field of Ethnomusicology."

The record demonstrates that the Beneficiary holds a doctor of philosophy degree in Ethnomusicology from the [redacted] awarded in 2022. He has been employed with the Petitioner as an assistant professor since January 2025, participating in "research, teaching, and service" in the field of music. The Petitioner asserts that the Beneficiary's "research and methodologies have vastly expanded scholarship on Black musical styles and its relationship with the Black diaspora."

To obtain Schedule A designation for an alien of exceptional ability, a petitioner must submit documentary evidence:

- Meeting at least two of seven listed requirements;
- Showing that a beneficiary has received "widespread acclaim and international recognition . . . by recognized experts" in their field; and

[2] The Petitioner's labor certification incorporates the offered job's requirements as listed on the prior application for a prevailing wage determination (PWD). *See* 20 C.F.R. § 656.40(a); *see generally* 6 *USCIS Policy Manual* E.6(A)(2) ("DOL no longer uses Form ETA-9089 to collect information about the minimum requirements of the job opportunity. Instead, employers now provide that information on the Application for Prevailing Wage Determination (Form ETA-9141).")

- Demonstrating that their work in the field during the past year and their intended U.S. work require exceptional ability.

20 C.F.R. § 656.15(d)(1).

SCOPS determined that the Beneficiary qualified as a member of the professions holding an advanced degree. SCOPS denied the petition, however, because it determined that the Beneficiary met only one of the seven criteria at 20 C.F.R. § 656.5(b)(1) of the five criteria that the Petitioner initially claimed. SCOPS also concluded that the Petitioner did not establish the Beneficiary's widespread acclaim and international recognition in the field. Nor did the Petitioner establish that the Beneficiary's work in the field during the past year required exceptional ability because the record only documents six months of the Beneficiary's employment.

On appeal, the Petitioner asserts that SCOPS applied an incorrect legal standard above that of "exceptional ability," did not meaningfully consider evidence in the record, and imposed a higher evidentiary standard. The Petitioner submits new evidence and asserts that the Beneficiary satisfies at least five of the seven criteria at 20 C.F.R. § 656.15(d)(1) as initially claimed. Regarding SCOPS' conclusion that the Beneficiary's work during the past year did not require exceptional ability, the Petitioner expresses general disagreement but does not specifically identify any erroneous conclusion of law or statement of fact on this issue. Nor does the Petitioner provide additional evidence of the Beneficiary's work experience during the year prior to filing the petition.

Issues or claims that are not raised on appeal are deemed to be "waived." An affected party must provide more than a mere reference to, or suggestion of, an argument. It must provide at least some development for its argument in either the Form I-290B, Notice of Appeal or Motion, or its brief for the argument to not be deemed waived. *See, e.g., Matter of O-R-E-,* 28 I&N Dec. 330, 336 n.5 (BIA 2021) (waiving an argument that was mentioned, but not developed); *Iliev v. Holder,* 613 F.3d 1019, 1026 n.4 (10th Cir. 2010) (finding a "suggestion" made "in passing" in a brief is insufficiently developed and is therefore waived); *Martinez-Serrano v. INS,* 94 F.3d 1256, 1259 (9th Cir. 1996) (waiving an issue that was referred to in the appellant's statement of the case but not discussed in the body of the brief). In this case, the Petitioner does not advance any specific arguments on SCOPS' conclusion that the Beneficiary's work in the field in the one-year period before filing did not require exceptional ability.

The Petitioner filed the instant petition on June 30, 2025. On the Form ETA-9089, the Petitioner lists the Beneficiary's work experience as assistant professor with it since January 2025. No other work experience is listed on the Form ETA-9089. The Beneficiary's resume does not specifically identify his work experience but does list his "teaching experience." This includes his experience as "Instructor of Record" for one course with the Petitioner in 2025, accounted for in the January to June 2025 timeframe, and as "Co-instructor" of three courses in 2021, and one course each in 2022 and 2023, which are all outside of the one-year period prior to filing.[3] The Beneficiary does not list any experience in 2024, the year before the instant petition was filed.

[3] We note that of the three courses the Beneficiary co-instructed in 2021, only one relates to the field of music, while the other two courses (French 1 and French 3) appear unrelated.

An applicant or petitioner must establish that he or she remains eligible for the benefit sought from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). The regulation at 20 C.F.R. § 656.15(d)(1) requires that an employer file "documentation showing the alien's work in that field during the past year did, and the alien's intended work in the United States will, require exceptional ability." Without specific identification of the Beneficiary's work in the field from June 2024 to June 2025, the one year prior to filing the petition, we are precluded from determining whether this work required an individual with exceptional ability. Therefore, we affirm the petition's denial on this basis.

Because the identified basis of denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's eligibility for Schedule A, Group II classification, including whether the Beneficiary has been accorded widespread acclaim and international recognition, and whether the Beneficiary meets two of the criteria at 20 C.F.R. § 656.15(d)(1). This should not be construed as agreement that the Petitioner has satisfied these requirements. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.